

No. 14569

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,
Appellant,
vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy
for the Estate of F. P. Newport Corporation,
Ltd., Bankrupt, Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern
District of California, Central Division

FILED

JAN 6 1955

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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* Page numbers appearing at foot of page of original Transcript of Record.

In the District Court of the United States, Southern
District of California, Central Division

In Bankruptcy No. 25308-M.

In the Matter of F. P. NEWPORT CORPORATION, LTD., Alleged Bankrupt.

CREDITORS' INVOLUNTARY PETITION
IN BANKRUPTCY

To the Honorable, the Judges of the Central Division of the United States District Court for the Southern District of California:

The petition of C. G. Kinsey, W. B. Halligan, and Hiram E. Casey, as Trustee of the Estate of Charles R. Stuart, a Bankrupt, respectfully shows and alleges:

I.

That at and during all the times herein mentioned the F. P. Newport Corporation, Ltd. was and is a corporation, and has had its principal place of business at 106 West 6th Street in the City of Los Angeles, County of Los Angeles, State of California for the greater portion of the six months next preceding the filing of this petition, and owes debts in the amount of One Thousand (\$1,000.00) Dollars and over, and the same is a commercial corporation doing a realty business, and is not a municipal, railroad, insurance or banking corporation or a building and loan association.

II.

That your petitioners are creditors of the said F. P. Newport Corporation, Ltd. having provable claims amounting in the aggregate in excess of securities held by them to the sum of Five Hundred (\$500.00) Dollars and more. That the nature and amounts of your petitioners' claims are as follows, to-wit: [2]

(a) The claim of your petitioner C. G. Kinsey is a balance due for work and labor performed and services rendered to the said Alleged Bankrupt at its special instance and request upon an open book account within four years last past in the sum of \$2,500.15 and accrued interest, which said sum the said Alleged Bankrupt promised and agreed to pay therefor, and that neither the whole nor any part of the said sum has been paid, and the whole thereof is now due, owing and unpaid from the said Alleged Bankrupt to the said C. G. Kinsey;

(b) The claim of your petitioner W. B. Halligan is a balance due for work and labor performed and services rendered to the said Alleged Bankrupt at its special instance and request upon an open book account within four years last past in the sum of \$613.32 and accrued interest, which said sum the said Alleged Bankrupt promised and agreed to pay therefor, and that neither the whole nor any part of the said sum has been paid, and the whole thereof is now due, owing and unpaid from the said Alleged Bankrupt to the said W. B. Halligan;

(c) The claim of your petitioner Hiram E. Casey

as Trustee in Bankruptcy for Charles R. Stuart, Bankrupt, is based upon a judgment procured by the said Hiram E. Casey as Trustee of the said Charles R. Stuart, Bankrupt, in the sum of \$766.97, which said sum was procured in the Municipal Court in the City of Los Angeles, County of Los Angeles, State of California, on the 12th day of June, 1934, in an action therein numbered 346125 wherein your said petitioner was the plaintiff and the said Alleged Bankrupt herein was the defendant; that no part of the said sum has been paid, and the whole thereof remains due, owing and unpaid.

III.

That the said Alleged Bankrupt, F. P. Newport Corporation, Ltd. is insolvent, and that within four months next [3] preceding the date of this petition and while insolvent the said F. P. Newport Corporation, Ltd. committed an act of Bankruptcy in this, that it did heretofore on or about the 15th day of March, 1935, transfer a portion of its property, to-wit, money in the sum of \$433.20 to a certain general unsecured creditor, to-wit, J. B. Gribble, with intent to prefer the said creditor over its other creditors in the same class, the payment of which said sum, as aforesaid, did then and there amount to a preference in favor of the said creditor.

Wherefore, your petitioner prays that service of this petition with the subpoena be made upon the said F. P. Newport Corporation, Ltd. as provided by the Acts of Congress relating to Bankruptcy,

and that it may be adjudged by the Court to be a Bankrupt within the purview of the said Act.

/s/ C. G. KINSEY,

/s/ W. B. HALLIGAN,

/s/ HIRAM E. CASEY,

as Trustee of the Estate of Charles
R. Stuart, Bankrupt.

/s/ HIRAM E. CASEY,

Attorney for Petitioning Creditors. [4]

Duly Verified. [5]

[Endorsed]: Filed March 19, 1935.

[Title of District Court and Cause.]

ADJUDICATION OF BANKRUPTCY AND ORDER OF REFERENCE

At Los Angeles, in said District, on the 12th day of January, A.D. 1937, before the Honorable Wm. P. James, Judge of said Court in Bankruptcy, the petition of C. G. Kinsey, W. B. Halligan and Hiram E. Casey, as Trustee of the Estate of Charles R. Stuart, a Bankrupt, that F. P. Newport Corporation, Ltd., a corporation, be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said F. P. Newport Corporation, Ltd., a corporation, is hereby declared and adjudged a bankrupt accordingly.

It Is Therefore Ordered, That said matter be re-

ferred to E. R. Utley, Esq., one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said F. P. Newport Corporation, Ltd., shall attend before said Referee on the 19th day of January, at Los Angeles, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said involuntary bankruptcy.

Witness the Honorable Wm. P. James, Judge of the said Court, and the seal therof, at Los Angeles, in said District, on the 12th day of January, A.D. 1937.

[Seal]

R. S. ZIMMERMAN,

Clerk

/s/ By M. R. WINCHELL,

Deputy Clerk

[6]

[Endorsed]: Filed January 12, 1937.

[Title of District Court and Cause.]

ORDER APPROVING APPOINTMENT OF TRUSTEE

At Los Angeles, Calif., in said district, on the 20th day of November, 1950, Paul W. Sampsell, of Los Angeles, Calif., having been appointed trustee of the estate of the above named bankrupt by the creditors of said bankrupt, as provided in the Act of Congress relating to bankruptcy,

It Is Ordered that the appointment of said Paul

W. Sampsell, as trustee be, and it hereby is, approved, and the amount of his bond is fixed at \$15,000.00 dollars.

/s/ HUGH L. DICKSON,

Referee in Bankruptcy [7]

[Title of District Court and Cause.]

PETITION FOR ORDER OF LIQUIDATION

The petition of Paul W. Sampsell, Trustee in Bankruptcy of the above entitled estate, respectfully represents to the Court:

1. That the assets of said estate consist of real and personal properties set forth in Exhibit A, Exhibit B and Exhibit C attached hereto and hereby referred to and made part hereof.

2. That the following described real property:

That portion of the Rancho Los Cerritos in the City of Long Beach, County of Los Angeles, State of California, described as follows:

Beginning at the most Southeasterly corner of the land described in the deed to the Title Insurance and Trust Company, recorded in book 5577 page 105 of Deeds, Records of Los Angeles County, in the Northwesterly line of Channel No. 3 of Long Beach Harbor; thence along the southeasterly line of the land described in said deed, North $19^{\circ} 42' 30''$ East 738.08 feet; thence North $64^{\circ} 42' 30''$ East 500 feet; thence South $19^{\circ} 42' 30''$ West 738.08 feet to a point in said Northwesterly line of Channel No. 3;

thence along said Northwesterly line South 64° 42' 30" West 500 feet to the point of beginning; was transferred to Security-First National Bank of Los Angeles, pursuant to an order and decree approving compromise dated and filed herein March 26, 1951, free and clear of all claims, liens, encumbrances, conditions, restrictions, reservations, easements and rights of way except as set forth in that certain deed from Paul W. Sampsell as Trustee in Bankruptcy of the estate of F. P. Newport Corporation, Ltd., dated November 27, 1951, recorded December 14, 1951, in Book 37853 page 39 of Official Records of Los Angeles County, California, to which deed reference is hereby made for further particulars.

3. That the annual income coming to the estate from all sources does not exceed the sum of \$35,000, principally from oil royalties; that most of the real property belonging to the estate produces no income.

4. That the annual state and county taxes amount to approximately \$9,810.00; that the ordinary administration expenses of said estate are approximately \$12,000.00 per annum.

5. That the claims of the general unsecured creditors of said estate are 50 in number and aggregate in amount approximately \$194,000.00, and that no dividend has been paid on said claims.

6. That the amount of accumulated and unpaid expenses of administration herein is approximately \$100,000.00 (to 12/31/51).

7. That the above estate has been pending in this

court since March 19, 1935, and that it was adjudicated on January 12, 1937, and ever since has been under trusteeship.

8. That prior to on or about December 14, 1951, when the compromise referred to in paragraph 2 hereof was consummated, it was impracticable to liquidate the assets of said estate for the reason that most of the assets stood in the name of Security-First National Bank of Los Angeles as security for a loan evidenced by a certain [87] deed of trust known as Trust D-7224, a copy of which is on file in this court and is hereby referred to for further particulars. That at the inception of said bankruptcy proceeding the unpaid amount of said loan was in excess of \$1,351,000 and that pursuant to the provisions of said deed of trust the prices and terms of sale of each parcel of real property covered thereby required the approval of said Bank and the execution by said Bank of deeds to purchasers.

9. That pursuant to an Order and Decree of this Court dated and filed on March 26, 1951, approving a compromise between petitioner as Trustee herein and said Bank, the encumbrance upon the property of the estate held by said Bank has been discharged and the assets covered by said encumbrance have been deeded and transferred to petitioner as Trustee herein and said properties are now free of encumbrance.

10. That petitioner is informed and believes and therefore alleges that this bankrupt estate was at its inception, continued to be and now is insolvent and

in the opinion of petitioner the continued operation of this estate by petitioner as Trustee herein is not in the best interests of the creditors hereof and others interested herein, but that said estate should be liquidated as speedily as possible and the proceeds paid out to defray the cost of administration, taxes and other expenses and the remainder paid to the unsecured creditors hereof.

11. That heretofore on November 23, 1942, in a certain action entitled *United States vs. Metcalf*, then pending before the United States Circuit Court of Appeals, Ninth Circuit, (131 Fed. (2d) 677), the said Court held that because the Trustee as Lessor herein leased two parcels of land to Universal Consolidated Oil Company as Lessee, executed community oil leases with Bankline Oil Company, Lessee, pending sales thereof, of unsubdivided lands, granted easements and rights of way to the City of Los Angeles and County of Los Angeles for street purposes, made sales of real property, cancelled [88] leases of real property, made payments upon the indebtedness of the bankrupt, compromised claims against the bankrupt, entered into agreements with the City of Long Beach, California, concerning right to oil and gas produced under the Universal Consolidated Oil Company lease, pending determination of title disputes to the property covered by said lease, renewed contracts with Oil Field Testing and Engineering Company, Inc. for checking of oil and gas production on said property, and leased a barn belonging to the bankrupt for the storage of hay, the said activities constituted the

“doing business of a corporate nature” and that the bankrupt estate was liable for the payment of corporate income tax under the provisions of 26 U.S.C.A. Int. Rev. Code section 52.

12. That the transactions outlined in paragraph 11 of this petition, other than collecting royalties from Universal Consolidated Oil Company and from another oil lease on one lot which brings in about \$5 per month have completely ceased; and the administration of the estate is now practically at a stand-still; that the clearing of the title to the real property of the estate from the encumbrance of Security-First National Bank of Los Angeles makes it feasible, in the opinion of petitioner, to liquidate the estate, sell the assets at public auction, pay the expenses of administration and other prior claims and distribute the residue ratably among the general creditors, and close the estate.

13. That in the opinion of petitioner the prompt sale of the assets of said estate, and the distribution of the proceeds thereof according to law are for the best interests of the estate and of all those interested therein.

Wherefore Petitioner Prays: That a time may be fixed for the hearing of this petition; that notice of the time and place of said hearing be given to the creditors of said estate according to law; and that, at the hearing hereof the Court, by its order, direct petitioner as Trustee herein henceforth not to operate the business [89] of the bankrupt, but to sell the assets hereof at public auction for cash either in bulk or in parcels as the Court may direct,

to liquidate the estate and convert its assets into money, or to take such other action as to the Court may seem proper in the premises.

/s/ PAUL W. SAMPSELL,
As Trustee in Bankruptcy of F. P. Newport Corporation, Ltd., Petitioner.

BAILIE, TURNER & LAKE,
/s/ By NORMAN A. BAILIE,
Attorneys for said Trustee. [90]

EXHIBIT "A"

Paul W. Sampsell, Trustee in Bankruptcy for
F. P. Newport Corporation, Ltd.

INVENTORY OF REAL PROPERTIES

March 31, 1952

All That Real Property situated in the County of Los Angeles, State of California, described as follows:

Parcel 1

Lot 1791½ of Tract 250, in the City of Glendale, as per map recorded in Book 15, Pages 130 and 131 of Maps, in the office of the County Recorder of said County, Except that portion described as follows:

Beginning at the most Northeasterly corner of said Lot, thence South 8° 45' West, along the Easterly line of said Lot, 135 feet; thence Northwesterly, parallel with the Northerly line of said lot 120 feet to a point; thence South 85° 05' West 31.01 feet, more or less, to the Westerly line of said Lot;

Exhibit "A"—(Continued)

thence North $8^{\circ} 45'$ East along the Westerly line of said lot to the Northerly line of said Lot; thence Easterly on said Northerly line to the point of beginning.

Parcel 2

Lot $180\frac{1}{2}$ of said Tract No. 250, Except that portion described as follows:

Beginning at the Northwest corner of said lot, thence along the Westerly line of said lot South $8^{\circ} 43' 15''$ West 162.77 feet to a point on a tangent curve concave Southerly having a radius of 66.91 feet, a radial line from said last-mentioned point bears South $1^{\circ} 12' 15''$ West; thence Easterly along said curve 23.60 feet; thence South $68^{\circ} 35' 20''$ East 37.69 feet to the point of beginning of a tangent curve concave Northerly having a radius of 44.16 feet; thence Easterly along said curve 36.57 feet; thence North $63^{\circ} 57' 40''$ East 8.78 feet to the point of beginning of a tangent curve concave Southerly having a radius of 91.01 feet; thence Easterly along said curve 20.15 feet to an intersection with a line drawn parallel with the Westerly line of said lot distant 120.00 feet measured along the Northerly line of said lot from the Northwest corner thereof, a radial line from said curve at its point of intersection with said parallel line bears South $13^{\circ} 21' 15''$ East; thence North $84^{\circ} 05'$ East 31.01 feet, more or less, to the Easterly line of said lot; thence along the Easterly line of said lot North $8^{\circ} 43' 45''$ East to the Northerly line of said lot; thence along the

Exhibit "A"—(Continued)

Northerly line North $81^{\circ} 16' 15''$ West to the point of beginning.

Parcel 3

Lot 181½ of said Tract No. 250, Except that portion described as follows:

Beginning at the Northeast corner of said lot; thence along the Easterly line of said lot South $8^{\circ} 43' 45''$ West 162.77 feet to a point on a tangent curve concave Southerly having a radius of 66.91 feet, a radial line from said last-mentioned point bears South $1^{\circ} 12' 15''$ West; thence Westerly along said curve 38.54 feet; thence South $58^{\circ} 12' 10''$ West 21.05 feet to the point of beginning of a tangent curve concave Northerly and having a radius of 92.98 feet; thence Westerly along said curve 43.94 feet; thence South $85^{\circ} 16' 40''$ West 10.71 feet to the point of beginning of a tangent curve concave Northerly and having a radius of 103.83 feet; thence Westerly along said curve 20.30 feet to a point from which a radial line bears North $6^{\circ} 28' 55''$ East; thence North [91] $8^{\circ} 43' 45''$ East parallel with the Easterly line of said lot 216.95 feet to the Northerly line of said lot; thence South $81^{\circ} 16' 15''$ East 120 feet to the point of beginning.

Parcel 4

Laurita Place Vacated, adjacent to Lot 181½ of Said Tract No. 250.

Parcel 5

Lots 184, 186, 188, 189, 193, and 194 of said Tract No. 250.

Exhibit "A"—(Continued)

Parcel 6

Those portions of Lot 185 of said Tract No. 250, described as follows:

(A) All of said Lot 185 Except that portion thereof lying Northeasterly of a line drawn from the Southeast corner of Lot 178½ to the most Northerly corner of Lot 186, Tract 250.

(B) An easement for street and road purposes and installation and maintenance of public utilities over a strip of land 50 feet wide in said Lot 185, the center line of said 50 foot strip being described as follows:

Beginning at a point in the South line of Colina Drive distant thereon North 75° 50' West 39.38 feet from the Northeast corner of said Lot 185, said point being the beginning of a non-tangent curve concave to the Northwest, having a radius of 566.50 feet, a radial line through said point having a bearing of North 47° 57' West; thence Southwesterly along said curve 175.79 feet, more or less, to a point in a line drawn from the Southeast corner of Lot 178½ to the most Northerly corner of Lot 186, Tract 250, distant thereon South 59° 11' 25" East 178.56 feet from the Southeast corner of Lot 178½ of said Tract 250. A radial line through said point bears North 30° 10' 15" West. The side lines of said easement to be prolonged or shortened to intersect the South line of Colina Drive and the said line hereinbefore described.

Parcel 7

Lots 190 and 192 of said Tract No. 250, and

Exhibit "A"—(Continued)

the South half of Colina Drive vacated, adjacent thereto.

Parcel 8

Lot 191 of said Tract No. 250, and the South and Westerly one-half of vacated portion of Colina Drive adjacent, except those portions thereof included within the lines of the following described parcel:

Beginning at the Northwest corner of Lot 13 of Tract No. 250, thence along the prolongation of the North line of said Lot 13, South $88^{\circ} 36'$ West [92] 52.98 feet; thence South $39^{\circ} 07'$ East 64.08 feet to the beginning of a curve concave to the Southwest having a radius of 285.47 feet; thence Southeasterly along said curve 49.49 feet to an angle point in the Westerly line of said Lot 13 distant North $29^{\circ} 11'$ West 54.21 feet from the Southwest corner of said Lot 13; thence Northerly along the Westerly line of said Lot 13, 93.79 feet to the point of beginning.

Parcel 9

Lot 195 of said Tract No. 250, Except that portion described as follows:

Beginning at the most Southerly corner of said lot thence North $23^{\circ} 30' 03''$ West 93.12 to a line drawn parallel with the most Southerly line of said lot and Northerly therefrom 75.00 feet, measured at right angles; thence North $77^{\circ} 09'$ West 230.83 feet along said parallel line; thence South $34^{\circ} 38' 18''$ West 80.77 feet to the Southwesterly corner of said lot; thence along the Southerly line of said

Exhibit "A"—(Continued)

lot South $77^{\circ} 09'$ East 315.90 feet to the point of beginning.

Parcel 10

Lot 16 of Tract No. 2052, Sheets 1 and 2, in the City of Los Angeles, as per map recorded in Book 28, Pages 67 and 68 of said Map Records.

Parcel 11

Lots 6, 7, and 20 of Tract No. 4044, in the City of Glendale, as per map recorded in Book 43, Page 79 of said Map Records.

Parcel 12

Lots 32, 33, 34, 40, 43, 44, 45, 46, 47, 48, 49 and 50 of Tract No. 6409, in the City of Glendale, as per map recorded in Book 114, Pages 3 and 4 of said Map Records.

Parcel 13

That part of Lot 5 of Tract No. 7146, in the City of Glendale, as per map recorded in Book 76, Page 15 of said Map Records, described as follows:

Beginning at a point in the Northerly line of said Lot 5, distant North $88^{\circ} 36'$ East 40.00 feet from the Northwest corner of said Lot 5; thence South $3^{\circ} 09'$ East parallel with the Westerly line of said Lot 5, a distance of 91.69 feet to a point on the Southerly line of said Lot; thence North $83^{\circ} 51' 10''$ East along said Southerly line 64.88 feet to the Southeast corner of said lot; thence North $13^{\circ} 31' 20''$ West along the Easterly line of said lot, a distance of 72.08 feet to the point of beginning of a curve concave Southwesterly having a radius of 20 feet; thence Northwesterly along said curve a dis-

Exhibit "A"—(Continued)

tance of 27.18 feet to a point in the Northerly line of said Lot; thence South $88^{\circ} 36'$ West 32.77 feet to beginning. [93]

Parcel 14

That part of Lot 8 of said Tract No. 7146, described as follows:

Beginning at a point in the Northerly line of said Lot 8, distant North $83^{\circ} 51' 10''$ East 80.08 feet from the Northwest corner of said Lot 8; thence South $3^{\circ} 09'$ East, parallel with the Westerly line of said Lot 8, 83.66 feet to a point on the Southerly line of said Lot; thence South $89^{\circ} 39'$ East along said Southerly line 19.81 feet to the point of beginning of a curve concave Northwesterly and having a radius of 15 feet; thence Northeasterly along said curve a distance of 25.96 feet to a point in the Easterly line of said Lot; thence along the said Easterly line North $8^{\circ} 49' 10''$ West 23.20 feet to an angle point in said Easterly line; thence North $13^{\circ} 31' 20''$ West 47.40 feet to the Northeast corner of said Lot; thence South $83^{\circ} 51' 10''$ West 24.84 feet to the point of beginning.

Parcel 15

That part of Lot 9, of said Tract No. 7146, described as follows:

Beginning at the Southeast corner of said Lot 9; thence South $85^{\circ} 45' 30''$ West, along the Southerly line of said Lot, 50.82 feet; thence North $3^{\circ} 09'$ West, parallel with the Westerly line of said Lot, 108.92 feet to a point in the Northerly line of said Lot; thence South $89^{\circ} 39'$ East along said Northerly

Exhibit "A"—(Continued)

line 27.68 feet to the point of beginning of a curve concave Southwesterly, having a radius of 15 feet; thence Southeasterly along said curve a distance of 21.16 feet to a point in the Easterly line of said Lot; thence South $8^{\circ} 49' 10''$ East along said Easterly line, 89.73 feet to the point of beginning of a curve concave Westerly and having a radius of 212.80 feet; thence Southerly along said curve a distance of 3.50 feet to the point of beginning.

Parcel 16

That part of Lot 12 of said Tract No. 7146, described as follows:

Beginning at a point in the Northerly line of said Lot 12, distant North $85^{\circ} 45' 30''$ East 79.98 feet from the Northwest corner of said Lot; thence South $3^{\circ} 09'$ East parallel with the Westerly line of said Lot, 90.37 feet to a point in the Southerly line of said Lot, said point being situated on a curve concave Southerly and having a radius of 145.00 feet, a radial line from said point bearing South $9^{\circ} 36' 09''$ West; thence Easterly along said curve a distance of 20.85 feet to the point of beginning of a curve concave Northerly and having a radius of 15 feet; a radial line from said point bearing North $17^{\circ} 49' 20''$ East; thence Easterly along said curve a distance of 23.97 feet to a point in the Easterly line of said Lot, said point being the point of beginning of a curve concave Westerly and having a radius of 212.80 feet, a radial line from said point bearing North $73^{\circ} 43' 21''$ West; thence Northerly along said curve a distance of 89.71 feet to the

Exhibit "A"—(Continued)

Northeast corner of said Lot; thence South $85^{\circ} 45' 30''$ West 50.82 feet to the point of beginning. [94]

Parcel 17

That part of Lot 13 of said Tract No. 7146, described as follows:

Beginning at a point on the Southerly line of said Lot 13, distant North $88^{\circ} 36'$ East 40.00 feet from the Southwest corner of said Lot; thence North $3^{\circ} 09'$ West parallel with the Westerly line of said Lot, 125.64 feet to a point in the Northerly line of said Lot, said point being situated on a curve concave Southerly and having a radius of 115.00 feet, a radial line from said point bearing South $7^{\circ} 09' 33''$ East; thence Easterly along said curve a distance of 47.84 feet to the point of beginning of a curve concave Southwesterly and having a radius of 15 feet, a radial line from said point bearing South $16^{\circ} 42' 35''$ West; thence Southeasterly along said curve a distance of 24.45 feet to a point in the Easterly line of said Lot; thence South $20^{\circ} 05' 45''$ West along said Easterly line 108.24 feet to the Southeast corner of said Lot; thence South $88^{\circ} 36'$ West 13.03 feet to the point of beginning.

Parcel 18

An un-divided one-fourth interest in Lot 14 in Block 7 of Long Beach Harbor Tract, in the City of Long Beach, as per map recorded in Book 10, Page 142 of said Map Records.

Parcel 19

Lot 5 in Block 20 of said Long Beach Harbor Tract; together with all right title and interest in

Exhibit "A"—(Continued)

to and under that certain Community Oil and Gas Lease, therein called "North Harbor No. 3 Community Oil Lease".

Parcel 20

That portion of Lot 20 of the 1419.09 acres tract of Rancho Los Cerritos, commonly known as Wilmington Colony Tract, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 4, Pages 405 and 406, of Miscellaneous Records of said County, described as follows:

All of said Lot lying Westerly of the Westerly line of Plat No. 2, Garden Home Tract, as per map thereof recorded in Book 11, Page 39, of Maps, records of said County; Easterly of the Easterly line of Terminal Freeway of the State of California, as per deed recorded in Book 23760, Page 97, Official Records of said County; and Southerly of a line drawn parallel with the center line of Hill Street, (40 feet wide), distant 664.71 feet Northerly therefrom and measured at right angles thereto. Except the Southerly 20 feet thereof, included in Public Road.

Parcel 21

Part of Lot 6, portion of Maria Dolores Dominguez de Watson 3365.95 Acre Allotment of the Partition of the Rancho San Pedro, Records filed Map 135, Superior Court Case No. 3284, Beginning at a point on the Northerly line of Grant Street 1992 feet Westerly from the intersection of the Westerly line of Hobson Avenue and the Northerly

Exhibit "A"—(Continued)

line of Grant Street; thence Westerly along the Westerly prolongation of said Northerly line 419.98 feet to [95] a point on the Northeasterly line of Southern Pacific Railroad Company right of way; thence Southeasterly along said Northeasterly line 456.44 feet; thence Northeasterly 178.84 feet to beginning containing .86 acres, more or less.

Excepting Therefrom that portion included in right of way of Los Angeles & Salt Lake Railroad Company, as per deed recorded in Book 11447, Page 8, Official Records of Los Angeles County, California, described as follows:

Beginning at a point in the prolongation Westerly of the Northerly line of Grant Street, formerly Watson Alley, (30 feet wide), as shown on Map of the Dominguez Harbor Tract, recorded in Book 12, Pages 14 and 15, of Maps, Records of said County, distant South $84^{\circ} 42' 22''$ West 21.35 feet, measured along said prolonged line of Grant Street, from the Northerly prolongation of the West line of Block 10 of said Dominguez Harbor Tract, said point of beginning being a point in a curve concave Southeasterly and having a radius of 914.37 feet, the tangent to said curve at said point bearing South $75^{\circ} 36' 50''$ West; thence Southwesterly along said curve 243.76 feet to a point in the North line of the 50-foot right of way of the Southern Pacific Railroad distant North $72^{\circ} 13' 38''$ West 276.50 feet, more or less, measured along said North line, from the Southerly prolongation of the West line of said Block 10, of Dominguez Harbor Tract; thence along

Exhibit "A"—(Continued)

the North line of said 50-foot right of way North $72^{\circ} 13' 38''$ West 90.43 feet to a point in a curve concave Southeasterly and having a radius of 982.88 feet, the tangent to said curve bearing North $56^{\circ} 46' 16''$ East; thence Northeasterly along said curve 79.91 feet to a point in said prolongation Westerly of the Northerly line of Grant Street, distant South $84^{\circ} 42' 22''$ West 265.27 feet, measured along said prolonged line, from the Northerly prolongation of the West line of said Block 10, of Dominguez Harbor Tract; thence along said prolonged line of Grant Street North $84^{\circ} 42' 22''$ East 243.92 feet to the point of beginning.

Parcel 22

Block 22, of Selvas de Verdugo, as per map recorded in Book 37, Pages 77 to 83, inclusive, of said Map Records.

Except that portion deeded to the City of Glendale for street purposes to be known as Hillside Drive, by deed recorded in Book 5637, Page 320, Official Records.

Parcel 23

Lot 20 in Block 25 and Lots 1 and 21 in Block 26 of Selvas de Verdugo, Sheet 8, as per map recorded in Book 44, Page 64 of said Map Records.

Parcel 24

Those portions of Lots 2, 3 and 22 in Block 42 and those portions of Lots 16 and 17, in Block 43, of said Selvas de Verdugo, included within the Los Angeles County Flood Control Channel as described in Superior Court Case No. 402578, Los An-

Exhibit "A"—(Continued)

geles County, as per map recorded in Book 84, Pages 99 and 100 of said Map Records. [96]

Parcel 25

Lot 19 in Block 43 of said Selvas de Verdugo as per map recorded in Book 84, Pages 99 and 100 of said Map Records, except that portion of said Lot deeded to Southern California Edison Company for Right of Way purposes.

Parcel 26

Lot 3 of the Verdugo Estate, as per map recorded in Book 12, Pages 34 and 35 of said Map Records.

Except those portions described as follows:

Beginning at a point in the Northerly boundary line of said Lot 3 of the Verdugo Estate, which point is distant South $88^{\circ} 37'$ West 43.54 feet along said Northerly boundary from the Easterly terminus of that certain course in said Northerly Boundary line shown on said above-mentioned map as having a bearing of North $88^{\circ} 37'$ East and a length of 19.185 chains; thence from said point of beginning, North $88^{\circ} 37'$ East 43.54 feet along the Northerly boundary line of said Lot 3 to an angle point; thence South $62^{\circ} 15'$ East 577.50 feet along the Northeasterly boundary line of said Lot to the most Easterly corner of said Lot 3; thence along the Easterly boundary line of said Lot the following five courses and distances: South $30^{\circ} 54' 20''$ West 427.9 feet; South $6^{\circ} 3' 40''$ West 901.96 feet; South $56^{\circ} 32' 25''$ West 200.49 feet; South $0^{\circ} 57' 50''$ West 264.60 feet, and South $29^{\circ} 24'$ West 135.36 feet;

Exhibit "A"—(Continued)

thence North $0^{\circ} 02' 55''$ West 2023.95 feet, more or less, to the point of beginning.

Also Excepting a strip of land 150 feet in width across said Lot 3 as conveyed to Southern California Edison Company by deed recorded in Book 4602, Page 238, Official Records.

Parcel 27

That portion of Rancho Los Cerritos, in the City of Long Beach, County of Los Angeles, State of California, described as follows:

Beginning at the most Southwesterly corner of the land described in the deed to the Title Insurance and Trust Company, recorded in Book 5577, Page 105 of Deeds, Records of said County, in the Northwesterly line of Channel No. 3, Long Beach Harbor; thence along said Northwesterly line South $64^{\circ} 42' 30''$ West 250 feet; thence North $19^{\circ} 42' 30''$ East 738.08 feet; thence North $64^{\circ} 42' 30''$ East 250 feet to the most Northwesterly corner of the land described in said deed to the Title Insurance and Trust Company; thence along the Northwesterly line of said land so described, South $19^{\circ} 42' 30''$ West 738.08 feet to the point of beginning.

In Book 1, Page 10 of the County Recorder's Assessment Maps, is the record of a map filed February 9, 1917, made by the City Engineer of the City of Long Beach for local assessment purposes, only, upon which map the above described property is designated as Lot 18. [97]

Parcel 28

That portion of the Southwest quarter ($SW\frac{1}{4}$)

Exhibit "A"—(Continued)

of the Northwest quarter (NW $\frac{1}{4}$) of Section Twelve (12), and of the North half (N $\frac{1}{2}$) of the Southwest quarter (SW $\frac{1}{4}$) of Section 12 (12), Township Twenty-three (23) South, Range Twenty-three (23) East, Mount Diablo Base and Meridian, in the County of Tulare, State of California, lying West of the Right of Way of the Atchison, Topeka and Santa Fe Railroad.

Excepting therefrom that portion thereof included within the following boundaries:

Beginning at the intersection of the East and West center line of Section Twelve (12), Township Twenty-three (23) South, Range Twenty-three (23) East, Mount Diablo Base and Meridian, and the Western Boundary line of the Atchison, Topeka and Santa Fe Railroad Right of Way, running thence Northwesterly One Thousand and Sixty (1060) feet along the West Right of Way boundary of the Atchison, Topeka and Santa Fe Railroad Right of Way; thence Southwesterly and at right angles to said Right of Way boundary line One Hundred (100) feet; thence Southeasterly and at right angles to the line last described and parallel with the Western Boundary line of the Right of Way of the Atchison, Topeka and Santa Fe Railroad One Thousand (1000) feet to the point of intersection with the East and West center line of said Section Twelve (12); thence East along said center line of said Section Twelve (12) to the place of beginning.

Tax bill shows 74 acres. [98]

EXHIBIT "B"

Paul W. Sampsell, Trustee in Bankruptcy for
F. P. Newport Corporation, Ltd.

INVENTORY OF REAL PROPERTIES

March 31, 1952

The Trustee has an interest, subject to tax sales for delinquent taxes, delinquent street improvement bonds, and Trust Deed or Mortgage encumbrances, in the following properties:

All that real property situated in the County of Los Angeles, State of California, described as follows:

Parcel 1: Lot 13, Block 1484, Tract 6889, in the County of Los Angeles, as per map recorded in Book 83, pages 81-84, of Maps, in the office of the County Recorder of said County.

Parcel 2: Lots 8 and 24, Tract 4044, in the City of Glendale, as per map recorded in Book 43, Page 79 of Maps, in the office of the County Recorder of said County.

All that real property situate in the County of Kings, State of California, described as follows:

Parcel 1: Lot 5, Block 27, Corcoran Townsite, in the City of Corcoran, as per map recorded in Book 1, Page 85, of Maps, in the office of the County Recorder of said County. [99]

EXHIBIT "C"

Paul W. Sampsell, Trustee in Bankruptcy for
F. P. Newport Corporation, Ltd.

INVENTORY OF PERSONAL PROPERTY

March 31, 1952

- 1—3 drawer—letter size—steel file.
- 4—Metal Map Cases—roller type.
- 1—Center drop—typewriter desk—oak.
- 9—Oak arm chairs.
- 4—3 drawer—letter size—steel files.
- 1—2 drawer—2 cash drawers—letter size—steel file.
- 1—3 drawer—legal size—steel file.
- 2—4 drawer—letter size—steel files.
- 1—14" Underwood Typewriter—elite type.
- 1—Typewriter Table—oak.
- 1—Oak—Flat—Linoleum Top—Table.
- 1—Card File—Desk Type.
- 1—Oak Table—filing.
- 1—Oak—Roll Top Desk.
- 1—Oak—Desk—flat linoleum top.
- 1—Monroe Calculator—hand type.
- 1—Error-no—(needs repairing).
- 1—Electric Heater.
- 1—Oak—Swivel Chair.
- 1—Typewriter Chair—Oak.
- 1—Oak—Map Cabinet File—8 drawers.
- 1—Oak—Legal size—desk file.
- 1—Oak—Desk Companion.
- 1—6 drawer—5"x8"—Y & E file—Oak.

Exhibit "C"—(Continued)

- 1—8 drawer—6"x4"—Y & E file—Oak; 1 drawer letter size—Oak.
- 1—Telephone Table—Oak.
- 1—Oak—4 drawer—desk letter file. [100]
- 1—Oak File—Legal size.
- 1—Oak File—Legal size.
- 1—Typewriter Chair—Oak.
- 1—Legal size—Transfer drawer.
- 1—2 drawer—card file—oak—3"x5".
- 1—Oak—Map Cabinet File.
- 1—14 drawer—file cabinet.
- 1—Oak Costumer—(hat tree).
- 1—Oak—7 drawer—desk letter file.

At Sampsell warehouse or on consignment
13—Letter size—steel transfer files.

- 1—12 bank and date—Burroughs Adding Machine (out of order).

In storage at 3235 No. Verdugo Road, Glendale.

- 1—Roll Top Desk—Oak.
- 1—Flat top desk—(from which rolltop has been removed).
- 2—Small Desks—Salesmen type.
- 1—Directors Table.
- 1—Gas Heater.
- 3—Office arm chairs.
- 1—Swivel Chair.

(All golden oak finish.) [101]

Duly Verified. [102]

[Endorsed]: Filed April 14, 1952.

[Title of District Court and Cause.]

PETITION TO REVIEW REFEREE'S ORDER

To the Honorable Hugh L. Dickson, Referee in
Bankruptcy:

Your petitioners respectfully show:

I.

That they are the above named bankrupt and certain unsecured creditors of F. P. Newport Corporation, Ltd., a corporation, the above named bankrupt, whose claims have been filed herein.

II.

That during the course of the proceedings herein, the trustee, on or about April 14, 1952, filed herein his petition for an order, which petition was entitled "Petition For Order of Liquidation". That said petition alleged in part that the "* * * annual income coming to the estate from all sources does not exceed the sum of \$35,000, principally from oil royalties" (Petition, p. 2, lines 12-14); that "* * * prior to on or about December 14, 1951, when the compromise referred to * * * was consummated, it was impracticable to liquidate the assets of the said estate * * *" (Petition, p. 2, lines 28-30); that "in the opinion of petitioner the continued operation of this estate by [106] petitioner as trustee herein is not in the best interests of the creditors hereof and others interested herein, but that said estate should be liquidated speedily as possible and the proceeds paid out to defray the cost of administration, taxes

and other expenses and the remainder paid to the unsecured creditors hereof" (Petition, p. 3, lines 17-23). (Emphasis added.)

That said trustee prayed that the Referee by his order "* * * direct petitioner as trustee herein henceforth not to operate the business of the bankrupt, but to sell the assets hereof at public auction for cash either in bulk or in parcels as the Court may direct, to liquidate the estate and convert its assets into money, or to take such other action as the Court may deem proper in the premises" (Petition, p. 4, line 31 to p. 5, line 3). (Emphasis added.)

III.

That said petition was heard on May 1, 1952, before the Honorable Hugh L. Dickson, Referee in Bankruptcy. That thereafter, and without the making of findings of fact, the said Referee, on May 26, 1952, made and caused to be filed herein on said date, his written order entitled "Order of Liquidation." That a true copy of said order is attached hereto, marked "Exhibit A", and is made a part hereof as if fully set forth at this place.

IV.

That said order was and is erroneous in that:

(a) It was and is beyond the jurisdiction of the Referee.

1. The United States Court of Appeals for the Ninth Circuit has heretofore expressly ruled in this case that the trustee herein "* * * was operating the

property of the corporation, and under orders of the court.” (Emphasis added.) *United States vs. Metcalf*, 131 Fed. 2d 677.

2. “Courts of Bankruptcy” have the exclusive power to authorize the business of bankrupts to be conducted by receivers and trustees. National Bankruptcy Act, Section 2(5). [107]

3. The Referee is not a “Court of Bankruptcy” and has no such power. National Bankruptcy Act, Section 1 (10).

4. The business of the bankrupt having been operated by the trustee herein from January 12, 1937, to date “* * * under orders of the court * * *” (*United States vs. Metcalf*, 131 Fed. 2d 677), said operation may not be terminated by the Referee but only by the “Court of Bankruptcy”, which is defined by Section 1 (10) of said Act as “* * * the district courts of the United States.”

5. Said ruling of the Ninth Circuit was made on November 23, 1942, and the trustee has at all times since accounted to the Collector of Internal Revenue, claimed tax deductions for losses sustained on the sale of certain assets, and paid Federal and State income taxes upon the basis that he was legally operating the business of the bankrupt.

(b) That said order directing that the trustee cease to operate the business of the bankrupt and to proceed at once to sell the assets “* * * at private sale or at public auction * * *” is not in the best interests of the unsecured creditors, the bankrupt, its stockholders, or any other interested party but is,

if the Referee has any discretion whatsoever (which is not admitted by your petitioners), an abuse of discretion by the Referee in that:

1. During the time that the business of the bankrupt has been operated by the trustee herein, assets have been liquidated, as of March 31, 1952, in the total sum of two million four hundred eleven thousand seven hundred seventy-three dollars and twelve cents (\$2,411,773.12).

2. That the remaining assets have been recently appraised by banking interests as having a fair market value in a sum in excess of seven hundred thousand dollars (\$700,000.00), and by a competent real estate and general appraiser as having a like value in the sum of one million dollars (\$1,000,000.00). [108]

3. That notwithstanding statements made at said hearing in reference to the non-liquidation of assets of the bankrupt, except as to oil, the fact is that during the operation of the business of the bankrupt the trustee herein has disposed of real property of the bankrupt estate as follows:

Subdivided lots	\$242,991.29
San Fernando Valley acreage.....	157,604.44
Verdugo Park and acreage	86,430.56
40 acre tract, U. S. Government.....	42,615.00
Crescenta Oaks, Tract 8447.....	45,500.00
State of California	25,425.00
Compromise, 6 acres waterfront.....	222,042.67

Total.....\$822,608.96

In addition to that sum and the income from oil

royalties in the sum of \$1,472,567.89, the trustee has collected rentals in the sum of \$90,278.69 and about \$25,000.00 in miscellaneous income.

4. That, as shown by said "Petition", the secured indebtedness of the bankrupt has been paid and that apart from the expenses of administration the bankrupt has indebtedness remaining only to the unsecured creditors in the sum of approximately \$194,000.00.

(c) That it, in effect, denies to the bankrupt the right to complete its plan of reorganization now pending whereby said assets of a value between \$700,000.00 and \$1,000,000.00 are to be used by the bankrupt for the purpose of obtaining a loan in the sum of \$250,000.00, which is believed to be a sum sufficient to pay the unsecured creditors in sums acceptable to them and to pay the expenses of administration in full.

The reason that it does so is that financial institutions willing to make such loan state that they cannot be committed in any such sum upon the security of assets that are subject to being [109] auctioned off in whole or in part without the knowledge or consent of either borrower or lender.

(d) That notwithstanding that a reorganization in bankruptcy is expressly made tax free by the Internal Revenue Code, the sale by the trustee of the assets at public auction or otherwise will not be tax free but will be subject to Federal and State income taxes which will be so great that, as stated by Ralph G. Ritchie, Certified Public Accountant and tax advisor to the trustee herein for the last ten

or more years, "will leave little or nothing for anybody." (Letter, Ralph G. Ritchie to counsel for trustee dated May 2, 1952.)

(e) That while it is true that the trustee and his counsel both recognize the seriousness of the tax problem involved by auction or other mass liquidation sales by the trustee rather than a reorganization by the bankrupt, and that through said "Order of Liquidation" it might be contended that sales made thereafter by the trustee can be claimed to be tax free by the trustee, it is apparent that like contentions have been made by bankruptcy trustees but that the courts have refused to sustain them.

As to the effect of Mr. Ritchie's said letter of May 2, 1952, the trustee's counsel has, after referring to the said letter in said counsel's letter of May 5, 1952, addressed to Mr. Ritchie, the trustee, and others, stated in part as follows:

"The remainder of this letter is addressed especially to Mr. Bouchard and Mr. Ritchie. This proceeding involves a very serious tax question."

Just how serious may be observed from the following:

1. Mr. Ritchie's said letter states in part as follows:

"I would like to point out the tax consequences of the proposed auction—based upon the following facts:

"1. Mr. Sampsell, as Trustee in Bankruptcy, is [110] liable for the corporate taxes on all sales made by him.

"2. The bankrupt is a real estate corporation

and, as such, is not entitled to the capital gain provisions or rates unless it can be clearly shown that the property involved is held primarily for investment—the order may or may not help.

“3. Assuming that an auction would bring \$300,000.00—the cost is \$100,000.00, then the tax on the \$200,000.00 would be subject to not only the normal and surtax rates of 52% but, also, the 30% Excess Profits Tax which would leave little or nothing for anybody.” (Emphasis added.)

(f) As to the law, we have but to look at two cases:

In this very proceeding the Ninth Circuit in *United States vs. Metcalf*, 131 Fed. 2d 677, has, in holding that the trustee herein must pay income taxes, stated:

“It is what the trustee does that determines his tax liability. If there had been no order at all and he had operated the properties, he could no more escape tax liability on the ground that such action was illegal than any other lawbreaker can escape liability for the profits of his illegal enterprise. *United States vs. Sullivan*, 274 U.S. 259, 47 S.Ct. 607, 71 L.ed 1037, 51 A.L.R. 1020.” (Page 679)

In the *Matter of Loehr*, Bankrupt (D.C. Wis. 1950) 51 U.S. Tax Cases Sec. 9244, the court, after first noting: “A trustee was then appointed who was directed to liquidate the estate”, and then noting the contention of the trustee “* * * that in this case, since the trustee had authority only to liquidate he was not ‘conducting any business’ and that therefore the statute is not applicable”, held, on the authority

of Mid America Co., 31 Fed. Supp. 601, and of the [111] approval of the rule laid down therein by the Court of Appeals for the Eighth Circuit in *State of Missouri vs. Gleick*, 135 Fed. 2d 134, that: “* * * the claim of the State and Federal governments for income taxes against the trustee should have been allowed.”

V.

Thus it will be seen that said erroneous order can only create chaos by destroying the ability of the bankrupt and its creditors to effect a tax free reorganization as provided by the Internal Revenue Code and by subjecting the bankrupt and his creditors to possibly a total loss through the imposition of a 52% tax, plus 30% excess profits tax, on everything that the trustee can obtain over \$100,000.00 at an auction sale or other sale provided for by said Order of Liquidation.

The first \$100,000.00 is offset by remaining cost so it will be tax free. It will just about pay the expenses of administration. As to the remainder, any part of the \$700,000.00 to \$1,000,000.00 of assets will, through such sale or sales by the trustee, in the words of the tax expert, “* * * leave little or nothing for anybody.”

The “anybody” will, of course, be the unsecured creditors and the bankrupt and its stockholders who, in asking that said order be vacated and set aside, ask that the following rules laid down by the Ninth Circuit in this very case (*Proctor and Gamble Mfg. Co. vs. Metcalf*, 173 Fed. 2d 207) be applied.

(a) "Where there are even slight circumstances which suggest that there is any unfairness to the estate in bankruptcy, a careful consideration should be had on review and a confirmed sale should be set aside if necessary to rectify the situation." (Page 209.)

(b) "* * * the District Judge has the responsibility to see that a sale which leaves the estate unprotected should not be confirmed." (Page 209)

(c) "Balancing that it is of overwhelming importance that [112] the rights of creditors in a bankruptcy should be protected and that a disposal of property on terms which violates the same should not be permitted to stand." (Emphasis added as to all quotations.)

Wherefore, your petitioners pray for a review of said order by the Judge, that said order be vacated and set aside.

Dated: June 2, 1952.

F. P. NEWPORT CORPORATION,
LTD.,

/s/ By F. P. NEWPORT, President

/s/ FAYE MacMILLAN PENDER,
Attorney-in-Fact for Martha T.
MacMillan,

/s/ ADDIE E. HURLBURT GARLAND

/s/ MRS. F. P. NEWPORT

/s/ DOROTHY DAY,

/s/ [Illegible]

/s/ L. M. CAHILL, Attorney for Petitioners [113]

EXHIBIT "A"

[Title of District Court and Cause.]

ORDER OF LIQUIDATION

Paul W. Sampsell, Trustee in Bankruptcy of the above entitled estate, having filed herein his verified Petition for Order of Liquidation, and said petition having come on regularly for hearing before Honorable Hugh L. Dickson, Referee in Bankruptcy, on May 1, 1952, at 10:00 o'clock a.m., the Trustee appearing by his counsel Messrs. Bailie, Turner & Lake by Norman A. Bailie, Esq., George Bouchard, Esq., his tax counsel, and Ralph G. Ritchie, his tax accountant being also present; the Bankrupt appearing by F. P. Newport its President, and L. M. Cahill, Esq., its attorney; Bank of America National Trust and Savings Association, the largest unsecured creditor, appearing by Edmund Nelson, Esq., its attorney; and Addie E. Hurlburt Garland, an unsecured creditor, appearing by Hugh Ward Lutz, Esq., her attorney; and oral testimony having been introduced; and the Court having heard the statements of counsel for the Trustee, and the said Bank of America, and the said Bankrupt; and no one appearing in opposition to said petition; and the Court being fully advised in the premises; and it appearing to the Court that notice [114] to creditors of the time and place of the hearing of said petition has been duly and regularly given according to law, and that each and every allegation in said petition is true; that said Trustee is not and has not been for more than one

year last past operating the business of the Bankrupt, that the property of the estate has been and is being held by the Trustee as a trust for the benefit of creditors and not otherwise, that the interest of the creditors requires that said estate should be expeditiously liquidated: and that said petition should be granted,

It Is Hereby Ordered, Adjudged and Decreed, That said Trustee proceed with all due *dilligence* to sell the assets of said estate either at private or at public auction for cash either in bulk or in parcels as the Court shall from time to time direct, subject to confirmation by the Court, to the end that the assets of said estate may be speedily converted into money, the expenses of administration paid, the residue paid to the creditors as required by law, and the estate closed.

Dated this 26 day of May, 1952.

/s/ HUGH L. DICKSON,

Referee in Bankruptcy [115]

[Endorsed]: Filed June 5, 1952.

[Title of District Court and Cause.]

CLAIM OF UNITED STATES FOR TAXES

State of California,

County of Los Angeles—ss.

R. A. Riddell, District Director of Internal Revenue, Los Angeles, California, a duly authorized agent for the United States in this behalf, being

duly sworn, deposes and says: (1) That the above-named is justly and truly indebted to the United States in the sum of \$11,391.21, with Interest and/or Penalties thereon as hereinafter stated; and (2) That the nature of the said debt is internal revenue taxes due pursuant to law as follows:

Tax Incurred During Administration		
Administrative Expense		
Deficiency		Int. to 1/20/54
Income, 1952	11,391.21	578.92
		Total \$11,970.13

Further interest will accrue on the above tax at the rate of 6% per annum, or \$1.87 per day, from January 20, 1954, until paid.

The basis of the deficiency is set out in Form 7900 letter which was mailed to the corporation in care of Paul W. Sampsell, Trustee, under date of December 28, 1953.

(3) That no part of said debt has been paid, but the the same is now due and payable at the office of the District Director of Internal Revenue at Los Angeles, California; (4) That there are no set-offs or counterclaims to said debt; (5) That the United States does not hold, and has not, nor has any person by its order, or to deponent's knowledge or belief, for its use, had or received any security or securities for said debt, except statutory liens; (6) That the said indebtedness is now due and payable; that no note or other negotiable instrument has been received for said debt or any part thereof; and that no judgment has been rendered thereon; (7) That

said debt has priority, and must be paid in advance of distributions to creditors, as and to the extent provided in Section 64a(4) of the Bankruptcy Act, or other applicable provisions of law.

Dated this 6th day of January, 1954.

/s/ R. A. RIDDELL,

District Director of Internal Revenue, Los Angeles,
California.

Subscribed and sworn to before me this 6th day
of January, 1954.

[Seal] /s/ WARREN A. BATES,
Notary Public

[Endorsed]: Filed January 7, 1954. [2]

[Title of District Court and Cause.]

OBJECTIONS TO CLAIM OF UNITED STATES GOVERNMENT FOR TAXES ALLEGED TO BE DUE

The is attached hereto marked "Exhibit A", a copy of a Revenue Agent's Report dated December 23, 1953, and addressed to Trustee in Bankruptcy, showing the results of an examination of Bankrupt's Federal Income Tax Returns for the years ended December 31, 1950, 1951 and 1952. The report indicates various adjustments to which specific objections will hereafter be made. The Revenue Agent's Report proposes a deficiency of income tax

for the year 1952 only in the amount of \$11,391.21.

On or about the 6th day of January, 1954, R. A. Riddell, District Director of Internal Revenue of Los Angeles, California, caused to be filed with the Referee herein, a claim of the United States for taxes in the said amount of \$11,391.21, together with interest thereon in the amount of \$578.92, or a total of \$11,970.13, representing the claim of the United States Government with interest accrued to the date of January 20, 1954. A copy of said claim is attached hereto marked "Exhibit B".

Objection is made to the allowance of this claim for the reason that it is predicated upon erroneous adjustments and conclusions of the Examining Agent and, therefore, there is no debt or liability to the United States Government to form the basis of an allowable claim.

Comments Regarding the Years 1950 and 1951

The Examining Agent in reviewing Bankrupt's returns for the years 1950 and [3] 1951 accepted those returns as properly reporting operating losses and agreed that no income taxes were due for those years. Objection is made for the record, however, that the Examining Agent improperly allowed as a deduction accrued interest in the years 1950 and 1951 upon claims filed against Bankrupt. This objection is based upon the theory that there is no legal obligation to pay interest upon approved claims until it has first been established that Bankrupt's estate is adequate to pay the principal amount of claims, and that during the years in-

volved there was neither any matured obligation to pay interest or any reasonable expectancy that interest would in fact be ultimately payable.

Adjustments Proposed for the Years 1952 and Specific Objections Thereto

Bankrupt's return for the year 1952 reported transactions only from January 1st of that year until May 26th, at which time the Referee in Bankruptcy of the United States District Court, Southern District of California, Central Division, entered an order:

"That said Trustee proceed with all due diligence to sell the assets of said Estate either at private or public auction, for cash, either in bulk or in parcels, as the Court shall from time to time direct, subject to confirmation by the Court to the end that the assets of said Estate may be speedily converted into money, the expenses of administration paid and the residue paid to creditors as required by law and the Estate closed."

It is respectfully submitted that the effect of the above order was to terminate the transaction of any business theretofore carried on and to place Bankrupt in the process of liquidation.

It has been repeatedly held that the process of liquidation pursuant to Court order does not give rise to taxable income nor does it require the filing of a Federal income tax return. See Walter Feigenbaum "The Tax Triangle: Creditor-Debtor—Commissioner—" *Taxes Magazine*, June 1952 at page 461, "* * * when a trustee in bankruptcy merely liquid-

ates the assets of a corporation he is neither required to file a return nor to pay any tax on any gain resulting from such liquidation"; and Morton Pepper "Income Tax Problems that come with Bankruptcy", New York University's Sixth Annual Institute on Federal Taxation at page 745, "However, where income is received in the course of liquidation no return is required." Among the authorities cited by the writers for statements to the above effect are [4] the following: In re Owl Drug Co. (D. C. Nevada) 21 F.Supp. 907; In re: Heller, Hirsh & Company (CCA-2, 1919) 258 F. 208, and Standard Oil Company of Louisiana vs. Apex Oil Corp. (Court of App. Tenn, 1951), 244 S.W. 2nd. 176.

In the Owl Drug Co. case, *supra*, the Court summarized what we believe to be the precise issue in this instance, as follows:

"The business of the bankrupt here, before the bankruptcy, was the operation of drug stores in several western states. After the bankruptcy, the trustee continued to operate the stores for a while. Then he sold them. When he did, the business of the bankrupt was liquidated. The only property in the hands of the trustee was the money received from the sale. This he was holding, subject to bankruptcy administration. While he operated the drug stores, his income was clearly income from operation. After the sale, the interest was received from the deposit of the money in various banks was earned, not by the bankrupt's business, but by the money into

which the business had been transmuted through the sale. In holding the money, the trustee was "not pursuing the ends for which the corporation was organized." (Emphasis indicated is that of the Court.)

As a result of the erroneous inclusion of items of alleged income arising out of liquidating transactions and during the period of liquidation as directed by the Court, the Examining Agent proposes to include additional income for the year 1952 as follows:

Interest	\$ 440.37
Royalties	20,681.80
Net Long Term Capital Gain....	54,227.12
Installment Sales Gain	3,351.20
<hr/>	
Total.....	\$78,700.49

Objection is made to the proposed inclusion in taxable income of Bankrupt for the year 1952 of the entire amount of the aforementioned items. The Agent's determination that this income should be included is wholly erroneous and contrary to well established law.

The Examining Agent further proposes to reduce net operating loss carry-overs from prior years to the year 1952 by the sum of \$19,921.22. The net operating loss carry-over claimed by Bankrupt on its 1952 return is not questioned by the Agent in its amount but [5] the Agent proposes to reduce operating losses of prior years by the amount of depletion claimed in those years. In attempting to

thus restore depletion, the Examining Agent has acted erroneously in that he has overlooked the provisions of Section 122(d)(1) of the Internal Revenue Code. Under the provisions of this Section, the adjustment cannot exceed the excess, if any, of percentage depletion allowed over the amount that would have been allowable if cost depletion had been claimed. See *Cambria Collieries Co. vs. Commissioner*, 10 T.C. 1172, dismissed (6 Cir.: 4-21-49). No consideration has been given to the amount of cost depletion which might be allowable under the statute, and the action of the Agent is, therefore, erroneous in proposing this adjustment.

As in the case of the years 1950 and 1951, the Agent has allowed as a deduction accrued interest on claims filed in this proceeding. For the record, objection is again made to the accrual of interest in a year in which the same is not a legal obligation and in which the likelihood of its ultimate payment is contingent and improbable.

Conclusion

It is respectfully submitted that the claim of the United States Government filed herein in the amount of \$11,391.21, together with proposed interest thereon in the sum of \$578.92, is based upon erroneous conclusions and misinterpretations of the law and the same is, therefore, without merit and does not constitute a debt properly owing which could form the basis of an allowable claim in this proceeding.

The claim of the United States Government

should, therefore, be disallowed in its entirety.

Respectfully submitted,

/s/ GEORGE BOUCHARD,

Special Tax Counsel for Paul W. Sampsell, Trustee
in Bankruptcy [6]

EXHIBIT "A"

Form 7900—Chief, Audit Division, 312 N. Spring
St., Los Angeles 12, California.

A:R:LHP

Dec. 23, 1953

F. P. Newport Corporation, Ltd.,
Mr. Paul W. Sampsell, Trustee in Bankruptcy
1009 Haas Bldg., Los Angeles 14, California.

Dear Mr. Sampsell:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1950, 1951 and 1952, discloses a deficiency of \$11,391.21, as shown in the statement attached.

Said tax is being assessed against you under the provisions of existing internal revenue laws applicable to bankruptcies and receiverships. Pursuant thereto no petition for redetermination may be filed with The Tax Court of the United States after the adjudication of bankruptcy or the appointment of a receiver.

Attention is called to the rights and priorities of the United States under section 64(a) or other applicable provisions of the Bankruptcy Act, as

amended, and under section 3466 of the Revised Statutes. Section 3467, Revised Statutes, as amended by section 518 of the Revenue Act of 1934, imposes personal liability upon every executor, administrator, assignee, or other person who, in paying debts of the person or estate for whom or for which he acts, fails to observe the priority in payment prescribed by law in favor of the United States.

The District Director is authorized to file proof of claim for any tax liability in proceedings under the Bankruptcy Act and in receivership cases.

The filing of proof of claim will not prejudice an application to this office for reconsideration of the above-mentioned tax. In order to facilitate adjustment of objections raised, a protest, executed in triplicate and under oath, stating in detail the grounds for your exceptions, may be submitted to this office within thirty days from the date of this letter. Affidavits or other data supporting such exceptions should be transmitted therewith.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner

/s/ By R. A. RIDDELL,
District Director

LHP:mee—Enclosure: Statement.

[7]

Statement

F. P. Newport Corporation, Ltd., Mr. Paul W. Sampsell, Trustee
in Bankruptcy, 1009 Haas Building, Los Angeles 14, Calif.
A:R:LHP

Tax Liability for the Taxable Years Ended
December 31, 1950, 1951 and 1952

Year Ended	Liability	Assessed	Over- assessment	Deficiency
12/31/1950				
Income Tax	\$ None	\$ None	\$ None	\$ None
12/31/1951				
Income Tax	None	None	None	None
12/31/1952				
Income Tax	11,391.21	None		11,391.21
	<hr/>	<hr/>	<hr/>	<hr/>
Totals	\$11,391.21	\$ None	\$ None	\$11,391.21

This determination of your income tax liability has been made upon the basis of information on file in this office.

The contention in a statement attached to your return that you were relieved from any obligation to report income and expenses or to pay tax upon net income for the period subsequent to May 26, 1952, the date of a certain court order instructing you to "proceed with due diligence to sell the assets of said estate * * *", is denied. It has been determined that you received income as shown herein, and that such income is subject to tax under the provisions of the Internal Revenue Code.

ADJUSTMENT TO NET INCOME

Taxable Year Ended December 31, 1950

Net income as disclosed by return (loss).....	\$(1,554.07)
Additional deduction (a) Accrued interest.....	2,684.92
	<hr/>
Net income adjusted (loss).....	\$(4,238.99)

EXPLANATION OF ADJUSTMENT

(a) An additional deduction of \$2,684.92 is allowed for accrued interest, not claimed in your return.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1950

Net income adjusted (loss).....	\$(4,238.99)
Correct income tax liability.....	None
Income tax liability shown by return.....	None
	<hr/>
Deficiency (overassessment) of income tax.....	\$ None

ADJUSTMENT TO NET INCOME

Taxable Year Ended December 31, 1951

Net income as disclosed by return (loss).....	\$(22,456.92)
Additional deduction: (a) Accrued interest.....	5,453.37
<hr/>	
Net income adjusted (loss).....	\$(27,910.29)

EXPLANATION OF ADJUSTMENT

(a) An additional deduction of \$5,453.37 is allowed for accrued interest, not claimed in your return.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1951

Net income adjusted (loss).....	\$(27,910.29)
Correct income tax liability	None
Income tax liability shown by return.....	None
<hr/>	
Deficiency (overassessment) of income tax.....	\$ None

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1952

Net income as disclosed by return (loss).....	\$(26,160.64)
Additional income and unallowable deduction:	
(a) Interest	\$ 440.37
(b) Royalties	20,681.80
(c) Net long-term capital gain.....	54,227.12
(d) Installment sales gain	3,351.20
(e) Net operating loss deduction	
decreased	19,921.22
	98,621.71
<hr/>	
Total.....	\$ 72,461.07

Additional deductions:

(f) Salaries and wages	\$ 2,400.00
(g) Rent	420.00
(h) Taxes	8,718.34
(i) Depletion	5,687.49
(j) Telephone	159.41
(k) Moving and travel	108.79
(l) Insurance	367.15
(m) Legal Fees	217.50
(n) Bankruptcy fees	15,826.58

(o) Oil lease inspection	1,225.00	
(p) Dehydration expense	360.33	
(q) Interest	4,487.39	39,977.98
		<hr/>
Net income adjusted		\$ 32,483.09

EXPLANATION OF ADJUSTMENTS

(a) to (d), inclusive, and (f) to (p) inclusive. The corporation income tax return filed by you on March 13, 1953, reports income and deductions for the period January 1, 1952, to May 26, 1952, only. Pursuant to the determination previously mentioned herein, adjustments are made to include items of income and deductions for the period May 27, 1952, to December 31, 1952, as shown by your books, which you excluded from your return.

(e) The correct net operating loss deduction allowable for the taxable year ended December 31, 1952, has been determined in the amount of \$2,643.18, in lieu of \$22,564.40, the amount claimed in your return, a decrease of \$19,921.22. The amount of \$2,643.18 is computed as follows:

Net operating loss, taxable year ended 12/31/50,	
previously shown herein	\$ 4,238.99
Net operating loss, taxable year ended 12/31/51,	
previously shown herein	27,910.29
<hr/>	
Total.....	\$32,149.28

Adjustments under Sec. 122, I. R. C.:

Depletion, taxable year ended 12/31/50	\$10,780.86	
Depletion, taxable year ended 12/31/51	9,985.37	
Depletion, taxable year ended 12/31/52	8,739.87	29,506.10
		<hr/>

Net operating loss deduction allowable in taxable	
year ended 12/31/52	\$ 2,643.18

(q) It has been determined that the correct deduction for interest for the taxable year ended December 31, 1952, is the amount of \$9,775.89, an increase of \$4,487.39 over the amount reported in your return. The amount of \$9,775.89 is computed as follows:

Interest expense for year ended December 31, 1952, as shown by your books.....	\$14,415.37
Less: Interest accrued on unsecured accounts.....	4,639.48
	<hr/>
Interest expense, as corrected.....	\$ 9,775.89

COMPUTATION OF INCOME TAX

Taxable Year Ended December 31, 1952

Net income adjusted	\$32,483.09
Income subject to tax	\$32,483.09

Computation under General Rule (Sections 13 and 15, I.R.C.)

Income tax (combined normal tax and surtax):

52% of \$32,483.09	\$16,891.21
Less	5,500.00

Total income tax under general rule.....\$11,391.21

Computation of Alternative Tax (Section 117(c), I.R.C.)

	Normal Tax	Surtax
	Net Income	Net Income
Income as above	\$32,483.09	\$32,483.09
Less: Excess of net long-term capital gain over net short-term capital loss.....	54,227.12	54,227.12
Ordinary net income.....	None	None
Partial tax		\$ None
Plus: 26% of \$54,227.12.....		14,099.05
Alternative tax		\$14,099.05
Correct income tax liability (tax under general rule)....		\$11,391.21
Income tax assessed: Original, account No. CN-7403.....		None
Deficiency of income tax.....		\$11,391.21

EXHIBIT "B"

[Printer's Note: Exhibit "B" is a duplicate of Claim of United States for Taxes set out in full at pages 41-43 of this printed Record.] [13]

Affidavit of Service by Mail attached. [14]

[Endorsed]: Filed February 5, 1954.

[Title of District Court and Cause.]

STIPULATION OF FACTS IN CONNECTION
WITH CLAIM OF DIRECTOR OF INTER-
NAL REVENUE FOR 1952 INCOME TAXES

It Is Hereby Stipulated by the trustee of the above-named bankrupt and the Director of Internal Revenue for the Sixth Collection District of California through their respective counsel that the following facts are true:

I.

F. P. Newport Corporation Ltd. was declared bankrupt in this Court in 1935. During the years 1938 and 1939, the trustee in bankruptcy executed certain oil and gas leases covering real estate included in the bankrupt estate, received substantial oil and gas royalty payments, inspected the operation of the property and made leases, contracts and sales of the bankrupt property. The Court of Appeals for the Ninth Circuit (see U.S. vs. Metcalfe 131 Fed. 2d, 677) held that these activities by the trustee in bankruptcy constituted the operation of property within the meaning of Section 52 of the Internal Revenue Code and that said trustee was accordingly liable for income tax on the income received during those years.

II.

In all years subsequent the trustee in bankruptcy has filed Federal income tax returns showing the items of income and deduction during the course of

his administration and paying the tax reported thereon.

III.

On May 26, 1952, the referee in bankruptcy entered an order, a copy of which is [15] attached hereto marked Exhibit "A". On November 28, 1952, the District Court confirmed said order. A copy of the order of the District Judge is attached hereto as Exhibit "B".

IV.

The trustee in bankruptcy filed a Federal income tax return for the calendar year 1952 in which was included only the income and expenses of the trustee for the period January 1, 1952 to May 26, 1952. He did not include in said return income and expenses for the period subsequent to May 26, 1952 for the reason that, as he contended, he was not liable for taxes on such income received subsequent to the date of the order of May 26, 1952 as he was no longer operating the property or business of the bankrupt. The trustee attached to his 1952 income tax return a statement to this effect.

V.

The Director of Internal Revenue has denied the contention of the trustee that the order of May 26, 1952 relieved the trustee from any obligation to report income or to pay tax upon net income for the period subsequent to May 26, 1952. Accordingly, the Commissioner of Internal Revenue determined a deficiency for the year 1952 of \$11,391.21, said deficiency being determined by including in the trus-

tee's income in 1952 all items of income realized by him subsequent to the order of May 26, 1952 and has filed his claim for said taxes in this proceeding. The trustee filed his objections to this claim.

VI.

Much of the property of the corporation which came into the hands of the trustee still remains unsold.

March 18, 1954.

/s/ GEORGE BOUCHARD,

Special Tax Counsel for the Trustee
LAUGHLIN E. WATERS,

U. S. Attorney

E. R. McHALE,

Asst. U. S. Attorney

/s/ By EUGENE HARPOLE,

Special Attorney, Internal Revenue
Service

[16]

EXHIBIT "A"

[Printer's Note: Exhibit "A" attached is a duplicate of Order of Liquidation set out in full at pages 40-41 of this printed Record.]

EXHIBIT "B"

[Title of District Court and Cause.]

ORDER OF DISTRICT JUDGE CONFIRMING
REFEREE'S ORDER OF LIQUIDATION

A petition to review an order of liquidation entered by the Referee in Bankruptcy on May 26,

1952, has been under submission by the undersigned District Judge since July 24, 1952.

Although thoroughly argued by the respective parties on the hearing and it appearing at that time to be warranted by the record and files of this protracted bankruptcy proceeding, it was believed by the Judge that if decision on the Referee's order of liquidation were deferred for a reasonable period some other lawfully authorized equitable method of settlement would be forthcoming and duly proposed. Such other proceeding now seems to be unavailable. Accordingly, the Referee's order of liquidation dated May 26, 1952, is confirmed.

Dated November 28, 1952.

PAUL J. McCORMICK,
United States District Judge [19]

[Endorsed]: Filed March 24, 1954.

[Title of District Court and Cause.]

ORDER DISALLOWING CLAIM OF DIRECTOR OF INTERNAL REVENUE FOR 1952 INCOME TAXES

The objections of the trustee to the claim of the Director of Internal Revenue for income taxes for the year 1952 in the amount of \$11,391.21 came on regularly for hearing on March 18, 1954, before the Honorable Hugh L. Dickson, Referee in Bankruptcy. The trustee appeared by George Bouchard,

his Special Tax Counsel and the Director of Internal Revenue appeared by Eugene M. Harpole, his attorney. The parties have filed a written stipulation of facts which the court adopts as its findings of fact and, having heard the arguments of counsel and being fully advised in the premises, hereby makes its order as follows:

It is ordered, adjudged and decreed that the order of liquidation of the referee dated May 26, 1952, terminated the trustee's authority to conduct the business of the bankrupt and said trustee was not, subsequent to May 26, 1952, operating said property or business within the meaning of Section 52 of the Internal Revenue Code.

It is further ordered, adjudged and decreed that the trustee is not liable for income taxes on receipts by him subsequent to May 26, 1952.

It is further ordered that the claim of the Director of Internal Revenue for additional income taxes for the calendar year 1952 be and it is hereby disallowed.

Dated: March 24th, 1954.

/s/ HUGH L. DICKSON,
Referee

Approved as to Form: Laughlin E. Waters, U. S. Attorney; E. R. McHale, Asst. U. S. Attorney; signed by Eugene Harpole, Special Attorney, Internal Revenue Service. [20]

[Endorsed]: Filed March 24, 1954.

[Title of District Court and Cause.]

MOTION AND ORDER EXTENDING TIME
TO FILE PETITION FOR REVIEW

Comes Now the United States of America by and through its attorneys Laughlin E. Waters, United States Attorney for the Southern District of California; Edward R. McHale, Assistant United States Attorney, Chief, Tax Division, for said District, and Eugene Harpole, Special Attorney, for the Internal Revenue Service, and moves the Referee that the time within which the United States of America or Robert A. Riddell its District Director of Internal Revenue at Los Angeles, California, may file a Petition for Review of the Referee's Order of March 24, 1954, disallowing the claim of the Director of Internal Revenue for 1952 income tax, be extended from April 3, 1954 to and including April 30, 1954.

Dated: March 31, 1954.

LAUGHLIN E. WATERS,
United States Attorney

EDWARD R. McHALE,
Asst. U. S. Attorney, Chief, Tax
Division

EUGENE HARPOLE,
Special Attorney, Internal Revenue Service

/s/ EUGENE HARPOLE,
Attorneys for United States of America and the
District Director of Internal Revenue.

It Is So Ordered this 31 day of March, 1954.

/s/ HUGH L. DICKSON,
Referee in Bankruptcy [21]

[Endorsed]: Filed March 31, 1954.

[Title of District Court and Cause.]

MOTION AND ORDER EXTENDING TIME
TO FILE PETITION FOR REVIEW

Comes Now the United States of America by and through its attorneys Laughlin E. Waters, United States Attorney for the Southern District of California; Edward R. McHale, Assistant United States Attorney, Chief, Tax Division, for said District, and Eugene Harpole, Special Attorney, for the Internal Revenue Service, and moves the Referee that the time within which the United States of America or Robert A. Riddell its District Director of Internal Revenue at Los Angeles, California, may file a Petition for Review of the Referee's Order of March 24, 1954, disallowing the claim of the Director of Internal Revenue for 1952 income tax, be extended from April 30, 1954 to and including June 1, 1954.

Dated: This 28 day of April, 1954.

LAUGHLIN E. WATERS,
United States Attorney
EDWARD R. McHALE,
Asst. U. S. Attorney

EUGENE HARPOLE,
Special Attorney, Internal Revenue Service

/s/ EUGENE HARPOLE,
Attorneys for United States of America and the
District Director of Internal Revenue.

It Is So Ordered this 29 day of April, 1954.

/s/ DAVID B. HEAD,
Referee in Bankruptcy [22]

[Endorsed]: Filed April 29, 1954.

[Title of District Court and Cause.]

PETITION FOR REVIEW OF THE REFER-
EE'S ORDER OF MARCH 24, 1954, DISAL-
LOWING THE CLAIM OF THE DIRECTOR
OF INTERNAL REVENUE FOR 1952 IN-
COME TAXES

Comes Now the United States of America, by and through its attorneys, Laughlin E. Waters, United States Attorney, Edward R. McHale, Assistant United States Attorney, and Eugene Harpole, Special Attorney, Internal Revenue Service, and files this its petition for review of that certain order made and entered in the above entitled proceeding on the 24th day of March, 1954, which as follows: to-wit:

[Title of District Court and Cause.]

Order Disallowing Claim of Director of Internal
Revenue for 1952 Income Taxes

“The objections of the trustee to the claim of the Director of Internal Revenue for Income taxes for the year 1952 in the amount of \$11,391.21 came on regularly for hearing on March 18, 1954, before the Honorable Hugh L. Dickson, Referee in Bankruptcy. The trustee appeared by George Bouchard, his Special Tax Counsel and the Director of Internal Revenue appeared by Eugene M. Harpole, his attorney. The parties have filed a written stipulation of facts which the court adopts [23] as its findings of fact and, having heard the arguments of counsel and being fully advised in the premises, hereby makes it order as follows:

“It is ordered, adjudged and decreed that the order of liquidation of the referee dated May 26, 1952, terminated the trustee’s authority to conduct the business of the bankrupt and said trustee was not, subsequent to May 26, 1952, operating said property or business within the meaning of Section 52 of the Internal Revenue Code.

“It is further ordered, adjudged and decreed that the trustee is not liable for income taxes on receipts by him subsequent to May 26, 1952.

“It is further ordered that the claim of the Director of Internal Revenue for additional income

taxes for the calendar year 1952 be and it is hereby disallowed.

“Dated: March 24, 1954.

“Hugh L. Dickson, Referee

“Approved as to Form: Laughlin E. Waters, U. S. Attorney, E. R. McHale, Asst. U. S. Attorney; by Eugene Harpole, Special Attorney, Internal Revenue Service.”

In this Petition for Review the United States of America alleges that the Referee in Bankruptcy erred in his said Order of May 24, 1954, in the following respects:

I.

That the Referee in Bankruptcy erred in disallowing the claim filed on January 7, 1954 by Robert A. Riddell, District Director of Internal Revenue for the Los Angeles District of California, on behalf of the United States of America for Federal income taxes for the taxable year 1952 in the sum of \$11,970.13, for the reason that said taxes were lawfully due to the United States upon the net income realized by the Bankrupt's estate from the operation of its property or business during said year.

II.

That the Referee in Bankruptcy erred in failing and refusing to hold that the trustee in bankruptcy was, during the taxable year 1952, operating [24] the property or business of F. P. Newport Corporation, Ltd., the bankrupt, within the meaning

of Section 52(a) of the Internal Revenue Code and Section 39.52-2 of Treasury Regulations 118.

III.

That the Referee in Bankruptcy erred in holding that the net income of \$32,483.09 determined by the Commissioner of Internal Revenue to have been received by said bankrupt's estate and its trustee in bankruptcy during the calendar year 1952 was not subject to federal income tax within the meaning of Section 52(a) of the Internal Revenue Code.

IV.

That the Referee in Bankruptcy erred in failing to allow the claim filed January 7, 1954, on behalf of the United States of America for 1952 income taxes in the sum of \$11,970.13.

Wherefore, your Petitioner prays that said order be reversed and that said claim for 1952 income taxes be allowed as filed, and the Trustee in Bankruptcy directed to pay the same in the sum of \$11,970.13 together with interest as provided by law forthwith.

Dated: May 7, 1954.

LAUGHLIN E. WATERS,

United States Attorney

EDWARD R. McHALE,

Asst. U. S. Attorney, Chief, Tax
Division

EUGENE HARPOLE,

Special Attorney, Bureau of In-
ternal Revenue

/s/ By EUGENE HARPOLE,

Attorneys for United States of
America

[25]

Affidavit of Service by Mail attached.

[26]

[Endorsed]: Filed May 12, 1954.

[Title of District Court and Cause.]

**CERTIFICATE ON REVIEW OF REFEREE'S
ORDER DISALLOWING FEDERAL TAX
CLAIM**

At the request of Hugh L. Dickson, a Referee in Bankruptcy of this Court, and pursuant to Bankruptcy Rule No. 209a of this Court, the undersigned Referee in Bankruptcy presents to the Court his Certificate on Review of the Order of Referee Dickson made and entered herein on March 24, 1954, disallowing the claim of the United States for income taxes in the sum of \$11,970.13.

Laughlin E. Waters, Edward R. McHale, Eugene Harpole, Attorneys for United States of America.

Norman A. Bailie, Attorney for Trustee.

George Bouchard, Special Tax Counsel for Trustee.

I. Statement of the Case

The previous history of this case is set forth in detail in the undersigned Referee's opinion of April

20, 1954, in connection with the sale of the assets of the bankrupt estate, except cash on [27] hand to R. T. Colter and Robbie E. Colter, his wife, as joint tenants, which said opinion is on file with the Clerk of this Court in connection with a petition to review the order of the undersigned Referee confirming such sale. On May 12, 1954 Referee Dickson filed and entered his order disallowing a claim of the Director of Internal Revenue of the United States of America for income taxes for the year 1952 in the sum of \$11,391.21. Thereafter, and on May 12, 1954, and within the limit of extensions of time granted by Referee Dickson, the said United States of America filed herein its petition for a review by the Judge of the said Referee's order of March 24, 1954. Thereafter, and on May 13, 1954, the said United States of America filed herein its praecipe for the Referee's Certificate on Review.

II. Statement of the Evidence

A stipulation of facts agreed to by the parties, signed March 18, 1954, and filed March 24, 1954, covers this subject.

III. Question Presented

The sole question presented is whether or not the Trustee operated a business within the meaning of Sec. 52 of the United States Internal Revenue Code after May 26, 1952, the date when the authority of the Trustee in Bankruptcy of the estate to conduct the bankrupt's business was terminated and an order of liquidation was entered.

IV. Findings of Fact, Conclusions of Law and Order

These are set forth in the order entered herein on May 12, 1954. [28]

V. Documents Accompanying This Certificate

1. Claim of Director of Internal Revenue for Deficiency in 1952 income taxes, filed Jan. 7, 1954.

2. Objections to claim of United States for taxes, filed Feb. 5, 1954.

3. Stipulation of facts in connection with claim for 1952 income taxes filed Mar. 24, 1954.

4. Order disallowing claim for 1952 income taxes, filed Mar. 24, 1954.

5. Motion and Order extending time to file petition for review, filed Mar. 31, 1954.

6. Motion and order extending time to file petition for review filed Apr. 29, 1954.

7. Petition for review of Referee's order of Mar. 24, 1954, filed May 12, 1954.

8. Praecipe for Referee's certificate on review filed May 13, 1954.

Note: United States of America requests to be sent up by the Certificate on Review a Stipulation of facts between counsel for H. F. Metcalf (the then Trustee in Bankruptcy) and the United States, dated Dec. 30, 1940, and its exhibits. This stipulation is not in either Referee's files and may be on file with the Clerk of the Court in connection with a review taken about that time which ultimately resulted in the decision of *U. S. vs. Metcalf*, CCA 9, 51 ABR. NS. 727, 131 F.(2d) 677, or may be on

file with the Clerk of the Court of Appeals, or at least is contained in the Transcript on Appeal in that case.

Dated: June 2, 1954.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy [29]

[Endorsed]: Filed June 2, 1954.

[Title of District Court and Cause.]

STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed by and between H. F. Metcalf, as Trustee in Bankruptcy of the above named bankrupt corporation, and the United States of America and Nat Rogan, its Collector of Internal Revenue, through their undersigned counsel, respectively, that for the purpose of ruling upon the objections of the Trustee in Bankruptcy hereto filed to the claim for income taxes presented on behalf of the United States of America by Nat Rogan, Collector of Internal Revenue, for the sum of \$19,363.65 for the taxable years 1938 and 1939, the following facts may be taken as true:

I.

The Commissioner of Internal Revenue determined deficiencies of \$14,365.96 and \$4,997.69 in the bankrupt's Federal income tax for the calendar

years 1938 and 1939, respectively. Notice of the Commissioner's determination was sent to "F. P. Newport Corporation, Ltd., H. F. Metcalf, Trustee in Bankruptcy, 216 Central Building, 108 West Sixth Street, Los Angeles, California" by registered mail on July 13, 1940. On July 22, 1940, Nat Rogan, as United States Collector of Internal Revenue for the Sixth Collection District of California, filed a claim in the above entitled bankruptcy proceeding on behalf of the United States for the sum of \$19,363.65, representing the amount of alleged deficiencies in income tax so determined by the Commissioner of Internal Revenue for the taxable years 1938 and 1939. On September 28, 1940, the Trustee in Bankruptcy filed an objection to the allowance of said claim.

II.

The bankrupt, F. P. Newport Corporation, Ltd., was organized under the laws of the State of Delaware on December 2, 1929, and it afterward qualified to do business in the State of California. It was engaged in the real estate business in the State of California prior to March 19, 1935. In the conduct of said business it purchased large tracts of [31] unimproved lands, subdivided portions of them into city lots, installed the essential public improvements and then endeavored to sell the lots, and did sell a great many of them. It also acted as a selling agent for many parcels of real property owned by other persons. It conducted its business for the purpose of making a profit.

III.

On March 19, 1935, an involuntary petition in bankruptcy was filed against F. P. Newport Corporation, Ltd., in the United States District Court for the Southern District of California, Central Division, in case numbered 25,308-M, Bankruptcy. A receiver was thereupon appointed by the Court. All of the assets and affairs of F. P. Newport Corporation, Ltd., were placed in the possession and control of said receiver. The receivership continued until January 12, 1937, when the corporation was adjudicated a bankrupt. H. F. Metcalf was appointed Trustee in Bankruptcy on March 18, 1937, and at all times since has been in possession and control of all the property and assets of the bankrupt.

IV.

The properties and assets received from the bankrupt by its Trustee consisted of numerous parcels of real estate, both improved and unimproved, and other assets consisting of accounts, promissory notes, bills receivable and other tangible and intangible property. [32]

V.

At the date of bankruptcy record legal title to approximately ninety per cent of the real properties received by the Trustee in Bankruptcy stood in the name of the Security-First National Bank of Los Angeles, in trust, as security for an indebtedness owing said bank by said F. P. Newport Corporation, Ltd., as evidenced by a written declaration of trust numbered D-7224, formerly numbered

SS-70401, signed by the Bank, approved by the bankrupt, on March 1, 1930. At the date of filing the petition in bankruptcy said indebtedness exceeded \$1,300,000.00. Said bank filed a claim in the bankruptcy proceeding as an unsecured creditor in the amount of \$500,000.00, after crediting what it determined to be the value of the security held by it upon the indebtedness of F. P. Newport Corporation, Ltd. Claims filed against the bankrupt estate other than the claim of said bank exceed in all the sum of \$295,000.00, none of which have been paid by the Trustee in Bankruptcy, either in whole or in part.

VI.

For the purpose of avoiding a forced sale of said real properties and with the object of obtaining time within which to liquidate the properties at a fair value, a contract was made and entered into by and between Security-First National Bank of Los Angeles, F. P. Newport Corporation, Ltd., the bankrupt, and the Trustee in Bankruptcy with the [33] approval of this Court. A copy of said agreement, with the supplements thereto and modifications thereof is hereby attached, marked Exhibit "A" and by reference made a part hereof.

VII.

Among the real properties title to which is so held by said bank under said Declaration of Trust are two parcels—one of three and the other of six acres, separated by an intervening three-acre parcel belonging to third persons. Both parcels are sit-

uated adjacent to what is known as Channel No. 3 of Long Beach Harbor in the City of Long Beach, California. During the pendency of the bankruptcy proceeding producing oil and gas wells were drilled and other wells were being drilled or about to be drilled on nearby lands which adjoined and surrounded said two parcels. It was feared by the Trustee and said Security-First National Bank that the operation of these wells would drain away the oil and gas believed by the trustee to underlie the same. The Trustee in Bankruptcy did not have sufficient funds to enable him to drill any oil or gas wells. By and with the approval of the Court, he leased the said two parcels of land to Universal Consolidated Oil Company, a copy of which lease is attached to the Trustee's Petition for Authorization, Approval and Confirmation of an Oil and Gas Lease, and for Order to Show Cause, filed with the Court on January 14, 1938, reference to which is hereby made for further particulars, and the same is made part [34] hereof by said reference. Other lots in the same general area which were not of sufficient size to be covered by separate leases, were included in a community oil and gas lease wherein the Bankline Oil Company was the lessee.

VIII.

Oil and gas royalties, including bonuses actually paid to the Trustee under said leases during the year 1938 amounted to \$245,517.65 and during the year 1939 amounted to \$206,333.36. These moneys were paid to the bank by the Trustee upon orders

of Court to cover taxes assessed against the properties, costs of engineering services and checking oil and gas production and to apply on account to the interest and principal owing the said bank by the bankrupt.

IX.

From the sales of real estate made during 1938 the Trustee received \$5,500.00 and during 1939 \$18,650.00 from the same source. Eighty per cent of the moneys so obtained were paid to the bank by the Trustee upon order of the Court to apply on account of the principal and interest owing said bank. Twenty per cent of said receipts were retained by the Trustee and used by him in payment of expenses of administration.

X.

The Trustee in Bankruptcy has endeavored at all times since his appointment to sell various [35] properties of the bankrupt at prices commensurate with their value. Due to depressed market conditions, sales have been slow. The indebtedness of the estate is considerable and the Trustee has believed it to be to the best interest of the creditors not to sacrifice the properties by an immediate sale under the aforesaid conditions and, accordingly, has conducted a selling program which would enable him to spread his sales over a period of time and take advantage of favorable market conditions. All sales made by said Trustee were duly approved by order of Court. Pending sale, some of the properties (other than the properties covered by the oil leases

hereinbefore mentioned) have been rented by the Trustee mainly for agricultural purposes.

XI.

It was necessary for the Trustee from time to time to make repairs upon certain of the properties and to make or have made certain improvements on some properties to preserve them from hazards of fire and flood.

XII.

The Trustee in Bankruptcy has participated in all of the transactions set forth in his First, Second, Supplemental Second and Third Reports and Accounts filed on March 29, 1938, December 8, 1938, December 22, 1938, and October 31, 1939, respectively. He has not engaged in the purchase or subdivision of real property nor acted as a selling agent for owners of property. [36]

XIII.

No general order of the Court authorizing the Trustee to conduct the business of the bankrupt corporation or forbidding him to do so has ever been made or signed. The Court has made orders authorizing the Trustee to make leases of agricultural lands, grant easements, rights of way for streets, make sales of real property, cancel leases of real property, make payments upon the indebtedness of the bankrupt, compromise claims against the bankrupt, to enter agreements with the City of Long Beach, California, concerning rights to oil and gas produced under the Universal Consolidated Oil

Company lease hereinbefore mentioned pending determination of title disputes, to renew contracts with the Oil Field Testing and Engineering Company, Inc., and to lease a barn belonging to the bankrupt estate for the storage of hay.

XIV.

The Trustee in Bankruptcy has kept books of account and filed with the Collector of Internal Revenue a statement of his receipts and disbursements for the years 1938 and 1939, with the notation that there had been and was no taxable income for said years or either of them. The Internal Revenue Agent thereafter examined the Trustee's books and the Commissioner of Internal Revenue made his assessments, represented by his alleged claim on file herein upon figures compiled by said Agent from the Trustee's records as follows: [37]

1938

RECEIPTS

By sales of real estate approved by Court.....	\$ 5,500.00
Interest on bankrupt's accounts.....	203.80
Rents collected from miscellaneous properties.....	4,557.98
Ranch rentals	1,792.50
Collected on bankrupt's old accounts.....	2,007.00
Cash bonus (Universal Consolidated Oil Co. lease).....	25,000.00
Oil bonus (Universal Consolidated lease).....	25,000.00
Oil and gas royalties.....	195,517.65
Total	<u>\$259,578.93</u>

DEDUCTIONS ALLOWED BY COMMISSIONER

Bankrupt's costs on real estate sold.....	\$ 4,470.60
Commissions to brokers on sales.....	275.00
Trustee's branch office expenses.....	407.34
Verdugo tract upkeep expenses.....	126.53

Other properties upkeep expenses.....	729.71
Ranch upkeep expenses.....	191.30
Title expenses Re: Sales made.....	74.10
Interest paid Security-First National Bank.....	50,773.40
Taxes paid on properties	21,705.76
Trustee's office rent	1,440.00
Telephone and telegraph	394.50
Office supplies and expenses.....	885.58
Salaries of Trustee's assistants.....	5,145.01
Miscellaneous expenses including Trustee's bond.....	262.99
Other expenses (Loss of assets through foreclosure)....	1,735.56
Depreciation on office fixtures and equipment.....	614.52
Depletion (oil)	67,517.35
Expense of checking oil and gas production on prop- erties leased to Universal.....	1,920.73
Bankruptcy fees allowed by Court.....	13,842.53

Total	\$172,512.51
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Commissioner's Determination of Net Income.....	\$ 87,066.42
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1939

RECEIPTS

By sales of real estate approved by Court.....	\$ 19,450.00
Interest on contracts for sales of real estate.....	17.53
Rents from miscellaneous properties.....	4,650.76
Ranch rentals	2,038.75
Other receipts by sales from miscellaneous personal properties	81.00
Oil and gas royalties	\$206,333.36
Total	\$232,571.40

DEDUCTIONS ALLOWED BY COMMISSIONER

Cost of real estate sold.....	\$ 30,770.40
Commissions to brokers on sales.....	1,256.50
Trustee's branch office expenses.....	1,418.98
Verdugo tract upkeep expenses.....	178.82
Ranch upkeep expenses	235.46
Other property upkeep expenses.....	1,462.30
Title expenses Re: sales made.....	424.70

Interest paid to Security-First National Bank.....	46,892.48
Taxes on properties	37,304.67
Trustee's office rent	320.00
Telephone and telegraph	334.06
Office supplies and expenses.....	1,173.81
Salaries to Trustee's assistants.....	4,727.53
Miscellaneous expenses including Trustee's bond.....	130.29
Expenses of checking production under Universal Consolidated oil lease	3,982.50
Depreciation on office fixtures and equipment.....	621.50
Depletion (oil)	56,741.67
Bankruptcy fees allowed by Court.....	14,306.82
<hr/>	
Total	\$202,282.41
<hr/>	
Commissioner's determination of net income.....	\$ 30,288.99

Dated: This 30th day of December, 1940.

WM. FLEET PALMER E.H.

United States Attorney

E. H. MITCHELL E.H.

Asst. U. S. Attorney

EUGENE HARPOLE,

Special Attorney, Bureau of Internal Revenue

Attorneys for United States of America and Nat
Rogan, Collector of Internal Revenue

BAILIE, TURNER & LAKE,

By ALLEN T. LYNCH,

Attorneys for H. F. Metcalf, Trustee in Bankruptcy
of F. P. Newport Corporation, Ltd., Bankrupt.

Approved:

H. F. METCALF, Trustee.

December 27, 1940. [40]

EXHIBIT "A"

AGREEMENT

This Agreement, made and entered into this 12th day of January, 1937, by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bankrupt, H. F. Metcalf, as Receiver for F. P. Newport Corporation, Ltd., an alleged bankrupt, hereinafter called the Receiver, and Security-First National Bank of Los Angeles, a National Banking Association, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bank.

Witnesseth:

Recitals:

The Bankrupt is indebted to the Bank for money loaned to the Bankrupt, or advanced for its use, under the terms of the Trust Declaration, hereinafter referred to, and for costs and expenses incurred by the Bank in connection therewith, in the following sums, to wit:

1. Unpaid principal, evidenced by promissory notes executed by the Bankrupt to the Bank.....	\$1,013,928.78
2. Interest on said notes up to February 1, 1937.....	219,887.25
3. Trust advances for benefit of the Trust Estate, under the terms of said Trust.....	105,365.93
4. Interest on said Trust advances to February 1, 1937	9,871.75
5. Necessary costs and expenses incurred by the Trustee in connection with the preservation of the Bank's security for its indebtedness.....	2,402.67
6. Interest thereon to February 1, 1937.....	273.00
Total.....	<hr/> \$ 1,351,729.38

Exhibit "A"—(Continued)

All of said indebtedness is secured by the property conveyed by the Bankrupt to the Bank, as Trustee, in Trust with power of sale, to secure the same, and by a Pledge by the Bankrupt of the entire beneficial interest in and to the said Trust. Said Trust is evidenced by a written Declaration of Trust No. D 7224, formerly numbered as SS 70401, signed by the Bank under date of March 1, 1930, and approved on said date by the Bankrupt. Reference is hereby made to said Declaration of Trust for the full terms and conditions thereof.

All of said indebtedness is long overdue, and no interest on said indebtedness has been paid by the Bankrupt for several years and all taxes and assessments on the Trust properties have been advanced by the Bank for several years.

An involuntary Petition to have the Bankrupt adjudicated a Bankrupt, has been pending since the month of March, 1935. Said Petition is at issue, but is still undecided.

Upon the filing of said involuntary Petition in Bankruptcy, to wit: on or about the 27th day of March, 1935, the Bankruptcy Court before which said Petition was pending, issued its Order restraining and enjoining the Bank from foreclosing [42] its said security for said indebtedness. Said restraining order is now, and ever since said date has remained in full force and effect.

On or about the 27th day of March, 1935, the Court appointed the above named Receiver, H. F. Metcalf, as Receiver in Bankruptcy, for properties

Exhibit "A"—(Continued)

of the Bankrupt, and he thereupon duly qualified and ever since said date has been, and now is, acting as such Receiver.

The Bankrupt and the Receiver are desirous of further postponing the foreclosure by the Bank of said security, for nonpayment of said indebtedness, and are desirous of starting the immediate liquidation of said indebtedness of the Bank, by the sale of certain of the real properties held by the Bank in said above referred to Trust.

The Bank is willing to delay further the foreclosure of the said security and will agree to the immediate sale of certain of the assets in said Trust on the terms, and subject to the conditions hereinafter contained, and not otherwise, hence this Agreement.

The Agreement

Order of Court Allowing Receiver to Execute Required.

The Receiver agrees to petition the Bankruptcy Court forthwith for leave to execute this agreement. Should the Court refuse to grant leave to the Receiver to so execute this agreement, and thereafter the Receiver fail to execute it, the Bank, at its [43] election, shall have the right to cancel this agreement.

Adjudication of Bankruptcy Required.

The Bankrupt, F. P. Newport Corporation, Ltd., agrees that it will make no resistance whatever in the pending petition to have it declared a bankrupt, said Petition and Answer now being set for hearing

Exhibit "A"—(Continued)

on January 12, 1937, before the Honorable Paul J. McCormick, Judge of the Bankruptcy Court. It is understood and agreed that unless a Decree adjudicating said corporation a Bankrupt be entered prior to the 15th day of January, 1937, and that said order thereafter become final without appeal, that this contract, at its option, may be terminated and cancelled by the Bank.

Approval by Trustee and Court.

Immediately upon a Trustee in Bankruptcy being appointed by the Court in said proceeding, this contract shall be presented, by proper petition of the Trustee, to the Bankruptcy Court, for its approval, and for an order authorizing the said Trustee in Bankruptcy to become a party thereto and be bound by the terms and conditions thereof. The approval of the said Bankruptcy Court and the due execution of this Contract by the said Trustee shall be conditions precedent to the said contract continuing as a binding and effective obligation on the Bank, and should said Court refuse to approve this agreement, or should the Trustee fail to execute the same, and become bound by all of the terms and conditions [44] thereof within five (5) days after the order approving the same has been entered, then this contract shall become utterly void and of no further force and effect, and the Bank shall be relieved of any and all obligations thereunder.

Reduction of Indebtedness.

Provided the above conditions are complied with, the Bank agrees to reduced the amount of the debt

Exhibit "A"—(Continued)

due it from the Bankrupt, as of the first day of February, 1937, to the sum of \$1,270,451.12, and to waive the difference between the amounts due as of said date, and said sum of \$1,270,451.12.

Reduction of Interest.

The said sum of \$1,270,451.12 shall bear interest, from February 1, 1937, at the rate of four per cent (4%) per annum, payable quarterly, and if not so paid, to bear like interest as the principal. It is agreed, however, that the first installments of interest shall be payable on August 1, 1937.

The principal of said indebtedness shall be payable as follows:

1. \$35,000.00 on or before six months from February 1, 1937.
2. \$65,000.00 on or before 12 months from February 1, 1937.
3. \$250,000.00 on or before 24 months from February 1, 1937.
4. \$150,000.00 on or before 30 months from February 1, 1937. [45]
5. The balance of said indebtedness on or before thirty-six (36) months from February 1, 1937.

Foreclosure of Security for Breach of Agreement.

So long as all of the terms and conditions of this agreement are complied with by the other parties hereto, the Bank agrees not to foreclose the security held for the payment of said indebtedness.

It is distinctly understood and agreed, however, that should any installment of principal or interest

Exhibit "A"—(Continued)

be not paid as herein provided, or any taxes or assessments, be not paid ten days prior to the delinquency thereof, or any of the terms and conditions of this agreement and the Declaration of Trust, herein referred to, be not complied with in the manner and at the times herein, and in said Declaration of Trust provided, that the Bank, except as otherwise provided for herein, may at its option call immediately due and payable the entire amount of the indebtedness then owing by the Bankrupt, or the Bankrupt Estate, and may immediately foreclose the security held by it, by such procedure as is provided for in said Declaration of Trust, or may foreclose the same by an action in court; provided, however, that the Bank expressly waives the right to foreclose the beneficial interest in said Trust as a pledge, as provided for in said Declaration of Trust, and also waives the provision of said trust contained on page 12 commencing in line 23 with the word "or" and up to and including the word "code" in line 27. Notwithstanding anything [46] to the contrary herein contained, it is agreed that the Bankrupt, or the Trustee in Bankruptcy shall have sixty (60) days after written notice within which to remedy any default for which notice has been given, before the Bank shall have the right to accelerate deferred payments of said indebtedness, and commence foreclosure of said security. The said sixty day notice herein provided for, shall be deemed the sixty day notice provided for in said declaration of Trust.

Exhibit "A"—(Continued)

Waiver of Statute of Limitations.

In consideration of the execution of this agreement, the Bankrupt, the Receiver and the Trustee, when appointed, qualified, and upon becoming a party hereto, expressly waive the provisions of any statute limiting the time when any action may be brought by the Bank on the indebtedness hereinabove referred to, or hereinafter incurred pursuant to the terms of this agreement and/or the Trust herein referred to.

Waiver of Defenses in Foreclosure.

It is understood that one of the principal considerations moving to the Bank in this agreement is the willingness of the other parties hereto to waive any and all defenses they may claim to have to the foreclosure of the security held by the Bank, other than as to the correct amount claimed to be due the Bank. It is, therefore, expressly agreed that, provided the debt be then due, as provided for herein, in any foreclosure proceeding brought pursuant to [47] the terms of said Declaration of Trust, and/or this agreement, no defense thereto will be made, other than to determine the correct amount remaining due and unpaid from the Bankrupt to the Bank, at the time of said foreclosure. And it is expressly agreed that the parties hereto will not seek to enjoin or delay such foreclosure, if and when brought by the Bank.

To enable the Trustee, hereinafter appointed, to make the payment of taxes, assessments, interest and principal herein provided to be made at the

Exhibit "A"—(Continued)

time herein specified, and to do all other things herein agreed to be done, it is understood and agreed that the Trustee may negotiate for the immediate sale of certain parcels of real property now held in said Trust, and described in a Schedule annexed hereto, marked Exhibit "A", and hereby referred to and made a part hereof.

All properties not described in said Exhibit "A" shall be retained in said Trust and be leased or sold on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

All contracts for the sale of said property shall be issued by the Bank. All payments for any of the Trust property shall be made to the Bank. [48]

Release Price Agreed Upon.

In this connection, the Bank agrees, provided no default exists which has not been cured within sixty (60) days, as Provided for Herein, to convey the above described parcels of said property to such purchaser or purchasers as the Trustee in Bankruptcy may direct, when there shall have been paid to the Bank, as release prices thereon, the amount of money agreed upon by the parties hereto, and set forth in Exhibit "A" attached hereto; provided, however, that where the Bank shall have executed

Exhibit "A"—(Continued)

and delivered a contract of sale for any part or portion of said property to any third party, no release, transfer or conveyance thereof shall be demanded for said property other than to the Buyer thereof under said contract, so long as said sales contract remains outstanding.

Release Price Credited Only on Principal.

All sums received on the release price of said property shall be credited upon only the principal of the Bankrupt's obligations to the Bank; it being expressly agreed that all payments of interest, taxes and assessments and further Trust Advances and expenses, except as hereinafter provided, shall be made by the Trustee in Bankruptcy from funds otherwise in the Bankrupt's estate, or from funds, if any, in the hands of the Bank, as Trustee, as hereinafter provided.

Distribution of Proceeds from Sales.

Out of the first money paid to the Bank, on any sale of said Trust Properties, there shall first be [49] paid all costs of sale, including commissions and Title Charges, not to exceed, however, twenty per cent (20%) of the sale price of said property.

The Special Fund.

All moneys thereafter received on said sales contracts shall be placed by the Bank in a special fund until the amount of the principal remaining due on said sales contract equals the amount of the release price agreed upon for the parcel of property so sold.

Thereafter all such payments, shall be applied

Exhibit "A"—(Continued)

upon the principal of the indebtedness owing to the Bank of the Bankrupt until the release price has been fully paid.

All interest on any contract or Trust Deed note shall, when received, be placed by the Bank in the Special Fund.

Disbursement of the Special Fund.

Out of the Special Fund, the Bank shall pay all taxes, assessments, insurance, interest and other charges and expenses of said Trust No. D7224 not theretofore paid by the Trustee in Bankruptcy. After payment out of said Special Fund of all current interest, taxes, assessments and Trust Expense, and after first setting aside in said Special Fund a reserve sufficient to pay all interest, taxes, assessments and Trust Expenses for one additional year, the remainder of the money in said Special Account shall be paid over to the Trustee in Bankruptcy. [50]

Use of Paper to Meet Quotas on Principal.

Although installment payments on the principal of the Bankrupt's agreed obligations have been hereinabove provided to be made on specific dates, it is, nevertheless, understood and agreed that said payments or quotas of the debt will be deemed to have been met, provided that for such portion thereof as shall not have been paid in cash, the Bank shall hold, as trustee of said Trust, Sales Contracts, or First Trust Deeds received from the sale of said real estate sufficient in amount so that the release prices payable thereon shall equal the

Exhibit "A"—(Continued)

amount of the unpaid portion of the said principal payments or quotas. The Bank reserves the right to approve or disapprove of said paper for this purpose, but such right shall not be exercised in an arbitrary or unreasonable manner.

Such paper, so approved by the Bank, for said purpose, shall only be available for said purpose so long as it remains in good standing, and without any delinquency in the payments thereon. Should any such paper become delinquent in any respect, the Trustee in Bankruptcy shall have sixty (60) days after notice thereof, to effect a reinstatement thereof or to provide new paper acceptable to the Bank in lieu thereof. Failure to so reinstate said paper or to replace the same, or to pay in cash the amount for which it has been accepted on the quotas, shall constitute a breach of this agreement, entitling the Bank to proceed with the foreclosure [51] of its security without giving any additional notice of such breach of agreement.

Such paper shall not be accepted by the Bank as payment on said indebtedness, but only as security therefor.

Temporary Collection of Rents by Trustee in Bankruptcy.

Although the Bank, under the express terms and conditions of said Trust No. D7224, is entitled to execute all leases for Trust Property, and to demand and receive all rents, issues and profits from the properties held by it in Trust, the Bank agrees that, for a period of one (1) year from the first

Exhibit "A"—(Continued)

day of February, 1937, the Receiver, and after his appointment, the Trustee in Bankruptcy, may collect and use all such rents, issues and profits, except the rents, issues and profits from oil, as hereinafter provided, up to a maximum of seven thousand dollars (\$7,000.00). All excesses above said sum to be promptly paid over to the Bank to be applied upon such of the obligations due the Bank by the Bankrupt as the Bank may elect to apply them upon. It is, however, expressly agreed that hereafter all leases and rental agreements shall be made and executed by the Bank, as provided for in said Trust Declaration.

Should there not be paid over to the Trustee in Bankruptcy out of the Special Fund, as hereinabove provided, the sum of \$7,000.00 during the second year, then out of the said rents, issues and [52] profits from said real property there shall be paid over to said Trustee in Bankruptcy sufficient to equal the said sum of \$7,000.00.

Oil Income and its Distribution.

The right to collect such rents, issues and profits by the Trustee in Bankruptcy, as is provided for herein, shall be expressly subject to the condition that any rents, issues and profits from any of said property for bonuses, rentals, or royalties for or from any oil lease thereon, shall be collected only by the Bank, and shall in no event be paid over to, or collected by said Trustee in Bankruptcy.

All income from oil, in the nature of bonuses, rentals and royalties from any of the properties

Exhibit "A"—(Continued)

held by the Bank in Trust, so paid to the Bank, shall be placed by the Bank in a Special Oil Account.

The funds in said Account shall be available to the Trustee in Bankruptcy for the purpose of making up any deficiency in the "Special Fund," to pay interest, taxes, assessments and expenses, as hereinabove provided, in order to obviate a default; provided, however, that all sums taken from said Oil Account for such purpose shall be repaid to said Oil Account from moneys thereafter coming into Special Fund and not needed to pay other or additional interest, taxes, assessments, or expenses then due.

Except as herein provided, all amounts in said account, shall be applied on September first and [53] March first of each year, or on such other dates as shall be mutually agreed upon by the Trustee in Bankruptcy and the Bank, on the principal of said indebtedness, and shall be considered as cash applied on the quotas of principal as hereinbefore set forth.

The said Declaration of Trust provides that the Bank may pay, purchase, contract or compromise any claims, liens, or incumbrances which in its judgment appear to effect said property or the Trust.

Payment of Claims Against Harbor Property.

Pursuant thereto, it is understood and agreed

Exhibit "A"—(Continued)

that the Bank may in its discretion, purchase, settle, or compromise, the claim of any and all third persons claiming an interest in or to the Long Beach Harbor Tract, lying on Channel No. 3 of the Long Beach Harbor, or in or to any proceeds from the sales thereof, and to that end may make all necessary advances to accomplish said purposes, and all such advances shall become a part of the principal of the Bankrupt's indebtedness and shall bear interest at the rate of four per cent (4%) per annum. It is understood that the claims referred to arise out of a certain contract or agreement known as the Syndicate No. 1 Agreement between F. P. Newport and certain third parties who furnished a portion of the purchase price of said property. [54]

No Dividends to General Creditors Pending Sale of Trust Property.

Since it is contended by the Bank that the security held by it is insufficient to pay the Bankrupt's obligations, and that it will, therefore, probably become an unsecured creditor for a substantial deficiency, it is expressly agreed that no liquidating dividends shall be paid to the creditors of said Bankrupt Estate until all of the Security held by the Bank shall have been sold, and the amount of such deficiency shall be ascertained, to the end that the Bank may participate in such dividends, if any. Provided, however, that nothing herein contained shall be deemed to prevent the Trustee in Bankruptcy from paying such amounts as may be neces-

Exhibit "A"—(Continued)

sary to clear the title to any property not covered by the trust.

Upon the execution of this agreement by the Trustee in Bankruptcy, all defaults existing shall be deemed to have been waived by the Bank.

Overlapping Quotas to Apply.

Should payments in excess of any one quota of principal be made prior to the due date thereof, such excess payments shall be construed as applying on the next maturing quota of principal.

Notwithstanding anything to the contrary herein provided, it is agreed that, upon any default occurring, and which shall not be cured within sixty (60) days from date of notice as hereinabove provided, no further or additional money in any fund [55] or funds held by the Bank shall be paid out of the Trust by the Bank, but all such sums of money held in any such fund shall be applied by the Bank, at its option, on any indebtedness then due the Bank.

Notwithstanding anything hereinabove to the contrary, the Bank agrees to advance and pay, prior to delinquency, the second installment of taxes for the year 1936-37 on the property held by it in said Trust No. D7224. All money so advanced shall draw interest at the rate of 4% per annum, payable quarterly, and if not so paid shall bear like interest as the principal of said advances.

Exhibit "A"—(Continued)

Such advances shall be repaid to the Bank out of any money held by it in the "Special Fund", provided such fund shall have in it at all times sufficient money to assure the payment of the installment of interest falling on August 1, 1937.

It is agreed, however, that if there is sufficient money in the "Special Fund" to pay said taxes and to assure the payment of the installment of interest falling due on August 1, 1937, then the Bank shall be under no obligation to advance and pay said taxes.

The terms and conditions of the above-mentioned Declaration of Trust No. D7224 shall be and they hereby are modified to conform to the terms and conditions hereof.

Other than as modified hereby, the terms and conditions of said Declaration of Trust shall be and they hereby are re-affirmed, ratified and approved. [56]

This agreement shall be executed by the parties hereto, and immediately upon the appointment of a Trustee in Bankruptcy for said Bankrupt, and his due qualification, and upon the Bankruptcy Court approving this agreement, and authorizing him to execute the same as such Trustee, he shall sign and deliver to the Bank an executed copy thereof, and thereupon he shall, as such Trustee, be bound by the terms and conditions thereof.

This Agreement, in so far as the Receiver in

Exhibit "A"—(Continued)

Bankruptcy is concerned, is subject to the approval of the Bankruptcy Court.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first hereinabove written.

[Seal] F. P. NEWPORT CORPORATION,
LTD.,

By F. P. NEWPORT, President

By J. B. GRIBBLE, Secretary

H. F. METCALF,

As Receiver for F. P. Newport Corporation, an Alleged Bankrupt

[Seal] SECURITY-FIRST NATIONAL
BANK OF LOS ANGELES

By J. E. HATCH, Vice-President

By RANDALL BOYD, Asst. Secretary

Exhibit "A"

PARCELS AND RELEASE PRICES THEREON REFERRED
TO IN THE FOREGOING AGREEMENT

Parcel No. 1—Lots 204-205 Tract No. 250—

Release Price\$ 65,000.00

Parcel No. 2—Lot 3 Verdugo Estates, Plus portions of
Tract 7146 and Blocks 25 and 26, Selvas de Verdugo—Release Price

45,000.00

Parcel No. 3—Remaining portion of Tract 250, plus
Block 22 of Selvas de Verdugo—Release Price.....

40,000.00

Parcel No. 4—All of the remaining subdivided lots in
the Verdugo area, together with Block 23 and 24
Selvas de Verdugo and the portion of the Theodore Verdugo Allotment—Release Price.....

130,000.00

Parcel No. 5—San Fernando Ranch Property—Lot 24,
Tract 1,000—Release Price

36,500.00

Exhibit "A"—(Continued)

Parcel No. 6—Lot 23, Tract 1,000—Release Price.....	32,500.00
Parcel No. 7—Lot 2, Tract 1,000 and Lots 1 and 2, Tract 1335—Release Price	55,000.00
Parcel No. 8—Lots 4 and 5, Tract 1336—Release Price	45,000.00
Parcel No. 9—Lots 6 and 7, Tract 1336—Release Price	45,000.00
Parcel No. 10—Following Miscellaneous Properties:	
One Release Price	15,000.00
A. Unsold Lots in La Cresenta Oaks.	
B. Unsold parcels in Richland Farms.	
C. Two houses, at 118 Windsor Road and 2866 Canada Blvd., both in Glendale.	

J. E. HATCH R.B.

F. P. NEWPORT,

J. B. GRIBBLE

[58]

SUPPLEMENTAL AGREEMENT

This Agreement, made and entered into this 31st day of August, 1937, by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bankrupt, H. F. Metcalf, as Trustee in Bankruptcy for the Estate of F. P. Newport Corporation, Ltd., a Bankrupt, and Security-First National Bank of Los Angeles, a National Banking Association, with its principal place of business in the City of Los Angeles, State of California, hereinafter called the Bank,

Witnesseth:

Recitals:

Under date of January 12, 1937, the Bankrupt, the Bank, and the then Receiver in Bankruptcy, H. F. Metcalf, entered into an agreement, providing

Exhibit "A"—(Continued)

certain terms and conditions under which the properties of the Bankrupt, held by the Bank, as security for the indebtedness of the Bankrupt, might be sold, and providing therein for the reduction in amount of the Bank's indebtedness, and other matters. Reference is hereby made to said agreement for the complete terms and conditions thereof.

The said Trustee in Bankruptcy, upon his appointment, petitioned the Bankruptcy Court to approve the contract and to authorize the same to be signed by him. [59]

The said Bankruptcy Court has approved said contract, and authorized said Trustee to execute the same, conditioned upon certain modifications, hereinafter set forth, being made thereto. All the parties are willing to modify said contract in said particulars, hence this Agreement.

No interest on the sum of \$1,270,451.12, agreed to be accepted by the Bank under the Contract of January 12, 1937, has been paid since February 1, 1937. The Bank has advanced, since said date, to-wit: on the 16th day of April, 1937, the sum of \$9,120.06 for taxes on the property held by it in said Trust No. D7224, as security for its indebtedness.

The Agreement:

Interest to be added to principal up to August 1st.

It is agreed that interest on said principal sum of \$1,270,451.12, as provided in said agreement, up to August 1, 1937, together with the sum of \$9,-

Exhibit "A"—(Continued)

120.06 advanced for taxes on April 16, 1937, with interest thereon at 4% per annum from the date of such advance, to August 1, 1937, shall be added to the said sum of \$1,270,451.12, and thereafter bear the same interest as said sum. It is agreed that the said sum, augmented by said above mentioned amounts, is as of August 1, 1937, the sum of \$1,-304,918.77. Said sum shall bear interest at the rate of 4% per annum from August 1, 1937, payable as follows: [60]

Interest payment extended.

The first installment of said interest thereon shall be paid on or before March 7, 1938. Thereafter said interest shall be paid quarterly from March 7, 1938. If any installment of interest be not so paid, it shall bear like interest as the principal.

Principal payments extended.

The principal of the Bank's indebtedness, in the agreed amount of \$1,304,918.77, shall be payable on the dates hereinafter specified, instead of on the dates specified in the said contract of January 12, 1937, and shall be paid as follows:

1. \$35,000.00 on or before March 7, 1938.
2. \$65,000.00 on or before September 7, 1938.
3. \$250,000.00 on or before September 7, 1939.
4. \$150,000.00 on or before March 7, 1940.
5. The balance of all indebtedness on or before September 7, 1940.

Repayment of taxes from special fund.

Such additional sums of money as the Bank, at its election, may advance after August 1, 1937, to

Exhibit "A"—(Continued)

pay taxes, assessments and improvement bonds against the property held by it in said Trust D7224, as security for said indebtedness, as provided in said Declaration of Trust, together with interest thereon from the date of such advance, at the rate of 4% per annum, compounded quarterly, shall be repaid to the Bank out of any money held by it in the "Special Fund" provided such fund shall have in it at all times sufficient money to assure the [61] payment of the installment of interest falling due on March 7, 1938.

Provided the other parties hereto shall have complied with all of the other terms and conditions of said Declaration of Trust D7224, and the said Agreement of January 12, 1937, as modified by this Agreement, the Bank agrees that the failure of the Bankrupt or the Trustee in Bankruptcy to pay the installment of taxes for the fiscal year 1937-38, falling due in December of 1937, on the properties held by the Bank in said Trust D7224, or should the Bank advance the money to pay such taxes, the failure to repay the same out of the "Special Fund" shall not constitute such default as to warrant immediate foreclosure of the said Declaration of Trust, and the failure to pay, or to repay the Bank, if the Bank shall advance them, the January installment of principal and interest on Improvement Bonds, a lien against any of the property held by the Bank in said Trust D7224, shall not constitute such default as to warrant immediate foreclosure of said Declaration of Trust. And the Bankrupt, or the

Exhibit "A"—(Continued)

Trustee in Bankruptcy, shall not be called upon to pay said Tax and bond liens, or to repay the same to the Bank should it advance them, with interest as hereinabove provided, prior to the seventh day of March, 1938.

Receipts from Sales and Rentals to pass through hands of Trustee in Bankruptcy.

While the said Declaration of Trust No. 7224, and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property [62] in said Trust, shall be paid to and be received by the Bank, it is, nevertheless, agreed, pursuant to the Order of said Bankruptcy Court, that such payments shall pass through the hands of the Trustee in Bankruptcy, and be paid to said Trustee in Bankruptcy, and shall be by him forthwith paid over in full to the Bank to be distributed in accordance with the terms of the said Trust No. D7224, and the agreement of January 12, 1937, as modified hereby.

It is expressly understood and agreed that any such funds so passing through the hands of the Trustee in Bankruptcy, except as hereinafter provided, shall, while in his possession, be impressed by the lien of the Declaration of Trust securing the indebtedness owing to the Bank. Such funds shall be deposited by the Trustee in Bankruptcy in a separate fund, and not commingled with any other funds in the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness, and, except as in said agreement of January

Exhibit "A"—(Continued)

12, 1937, provided, shall not become any part of the general assets of the Bankrupt Estate, nor charged with the payment of any of the expenses of administering said Bankrupt Estate, and nothing herein contained shall prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee.

No Modification of \$7,000 Income Provision.

Nothing herein contained, however, shall modify or change the provisions of said contract of January 12, 1937, under the heading of temporary [63] collection of rents by the Trustee in Bankruptcy, by the terms of which certain rentals up to a maximum of \$7,000.00 for a limited period, are to be retained by the Trustee in Bankruptcy.

As provided for in said Agreement of January 12, 1937, it is agreed that all sales or leases of property shall be made by the Bank and the Trustee in Bankruptcy, subject to the approval of the Bankruptcy Court.

Referring to the second paragraph, on page seven of said Agreement of January 12, 1937, entitled "Release Prices Credited Only on Principal", it is understood and agreed that the Trustee in Bankruptcy shall not be required, except by an order of this court, to make any payments to the Bank out of funds derived from properties not held by the Bank under its said Trust.

Other than as expressly modified by the terms of this Agreement, the said Agreement of January 12,

Exhibit "A"—(Continued)

1937, shall remain in full force and effect, and is hereby ratified and confirmed.

Contract as Modified Affirmed.

Hubert F. Laugharn was appointed Trustee in Bankruptcy by the Referee in Bankruptcy, and the District Judge made an order vacating said appointment, and adjudging that H. F. Metcalf had been elected Trustee, from which latter order an appeal to the United States Circuit Court of Appeals for the Ninth Circuit is now pending. Said Hubert F. Laugharn petitioned the Court for instructions as to whether or not he should sign the said contract and be bound thereby in the event of [64] a decision confirming his appointment as Trustee and reversing the order of the District Judge, and the Court has instructed him to so sign and be so bound.

Therefore, said Hubert F. Laugharn, by his signing this agreement, becomes bound by all of the terms and conditions thereof, should he become Trustee of said Bankrupt Estate.

This contract shall be binding upon the parties hereto, their successors and assigns.

In Witness Whereof, the parties hereto have hereunto set their hands and seals, the day and year first hereinabove written.

[Seal] F. P. NEWPORT CORPORATION,
LTD.,

Exhibit "A"—(Continued)

By F. P. NEWPORT, President

By J. B. GRIBBLE, Secretary

H. F. METCALF,

Trustee in Bankruptcy for the Creditors of F. P.
Newport Corporation, Ltd., a corporation, Bank-
rupt.

[Seal] SECURITY-FIRST NATIONAL
BANK OF LOS ANGELES,

RTA By V. O. WROOLIE, Vice-President

By RANDALL BOYD, Asst. Secretary

HUBERT F. LAUGHARN [65]

EXHIBIT "B"

[Title of District Court and Cause.]

STIPULATION RE MODIFICATION OF CON-
TRACT OR AGREEMENT OF JANUARY
12, 1937

It Is Hereby Stipulated and Agreed by and be-
tween the undersigned that that certain contract or
agreement dated the 12th day of January, 1937,
made and entered into by and between F. P. New-
port Corporation, Ltd., a Delaware corporation,
bankrupt, H. F. Metcalf as Receiver for said F. P.
Newport Corporation, Ltd., and Security-First Na-
tional Bank of Los Angeles, a national banking
association, (copy of which contract or agreement is
attached to, marked Exhibit "A", and made part
of the Findings and Order made and signed by the

Exhibit "B"—(Continued)

Honorable Ernest R. Utley, Referee in Bankruptcy herein, on the 13th day of August, 1937) may be and is hereby modified in the following respects and particulars only, to wit:

(1) That certain paragraph appearing on page 6 of said contract or agreement (pages 6 and 7 of said Exhibit "A"), reading as follows:

All properties not described in said Exhibit "A" shall be retained in said Trust and be leased or sold on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy, and shall be subject to the approval of the Bankruptcy Court.

Is Hereby Changed, Altered and Modified to Read As Follows: [66]

All properties not described in said Exhibit "A" shall be retained in said Trust and be leased or sold on terms and conditions subject to the approval of the Bankruptcy Court. For the purposes of this agreement it is understood that no release prices are fixed on properties not described in said Exhibit "A".

(2) That certain paragraph appearing on page 6 of said contract or agreement (page 7 of said Exhibit "A") reading as follows:

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to the Bank and the Trustee in Bankruptcy and shall be subject to the approval of the Bankruptcy Court.

Exhibit "B"—(Continued)

Is Hereby Changed, Altered and Modified to Read
As Follows:

Any and all sales of said real property described in Exhibit "A" shall be on terms and conditions satisfactory to and shall be subject to the approval of the Bankruptcy Court.

Dated this 14th day of October, 1937.

[Seal] F. P. NEWPORT CORPORATION,
LTD.,

By F. P. NEWPORT, President

By J. B. GRIBBLE, Secretary [67]

[Seal] SECURITY-FIRST NATIONAL
BANK OF LOS ANGELES,

By C. W. CRAIG, Vice President

By RANDALL BOYD, Asst. Secretary
H. F. METCALF,

As Trustee in Bankruptcy of F. P. Newport Corporation, Ltd. (H. F. Metcalf)

HUBERT F. LAUGHARN,
L. M. CAHILL,

Counsel for F. P. Newport Corporation, Ltd.

W. C. SHELTON,
GEORGE BURCH, JR., and
EARL E. MOSS,

By W. C. SHELTON,

Counsel for said Security-First National Bank of Los Angeles

ROBERT B. POWELL,

Counsel for Hubert F. Laugharn

Exhibit "B"—(Continued)

BAILIE, TURNER & LAKE,
By NORMAN A. BAILIE,
Counsel for H. F. Metcalf, Trustee

Approved this 14th day of October, 1937.

PAUL J. McCORMICK,
United States District Judge

EXHIBIT "C"

[Title of District Court and Cause.]

STIPULATION RE MODIFICATION OF SUP-
PLEMENTAL AGREEMENT DATED AU-
GUST 31, 1937

It Is Hereby Stipulated and Agreed by and between the undersigned that that certain "Supplemental Agreement" dated the 31st day of August, 1937, and made and entered into by and between F. P. Newport Corporation, Ltd., a Delaware Corporation, Bankrupt, H. F. Metcalf, as Trustee in Bankruptcy for the Estate of F. P. Newport Corporation, Ltd., a Bankrupt, and Security-First National Bank of Los Angeles, a National Banking Association, (copy of which "Supplemental Agreement" is attached to, marked Exhibit "C" and made a part of the Findings and Order made and signed by the Honorable Ernest R. Utley, Referee in Bankruptcy herein, on the 13th day of August, 1937), may be and is hereby modified in the following respects and particulars only, to wit:

Exhibit "C"—(Continued)

Those certain paragraphs appearing on pages 3 and 4 of said "Supplemental Agreement" and reading as follows: [69]

"While the said Declaration of Trust No. 7224, and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust, shall be paid to and be received by the Bank, it is, nevertheless, agreed, pursuant to the Order of said Bankruptcy Court, that such payments shall pass through the hands of the Trustee in Bankruptcy, and be paid to said Trustee in Bankruptcy, and shall be by him forthwith paid over in full to the Bank to be distributed in accordance with the terms of the said Trust No. D7224, and the agreement of January 12, 1937, as modified hereby.

"It is expressly understood and agreed that any such funds so passing through the hands of the Trustee in Bankruptcy, except as hereinafter provided, shall, while in his possession, be impressed by the lien of the Declaration of Trust securing the indebtedness owing to the Bank. Such funds shall be deposited by the Trustee in Bankruptcy in a separate fund, and not commingled with any other funds in the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness, and, except as in said agreement of January 12, 1937, provided, shall not become any part of the general assets of the Bankrupt Estate, nor charged with the payment of any of the expenses of administering said Bankrupt Estate, and

Exhibit "C"—(Continued)

nothing herein contained shall [70] prevent the Court from fixing fees on the basis of all money passing through the hands of the Trustee."

Are Hereby Changed, Altered and Modified to Read as Follows:

"While the said Declaration of Trust No. D7224 and the contract of January 12, 1937, provide expressly that all moneys from Sales and Leases of Property in said Trust shall be paid to and be received by the Bank, it is, nevertheless, agreed, in order to comply with the bankruptcy law requiring that all bankruptcy funds be accounted for by the Trustee and be disbursed by him only upon checks or warrants countersigned by the Referee, that all such moneys shall be paid to said Trustee in Bankruptcy, and, until the indebtedness due the Bank has been paid, shall be by him forthwith paid over in full to the Bank, to be distributed in accordance with the terms of said Trust No. D7224 and the agreement of January 12, 1937, as modified hereby.

"Recognizing that the Bank has a prior right to the moneys in the preceding paragraph mentioned until the indebtedness due it has been paid, it is therefore expressly understood and agreed that such funds or moneys so paid to and received by the said Trustee in Bankruptcy from Sales or Leases or other disposition of property under said Trust shall, until the indebtedness due the Bank has been paid and [71] except as hereinafter provided, be, while in his possession, impressed with the lien of the Declaration of Trust securing the indebtedness ow-

Exhibit "C"—(Continued)

ing to the Bank, and such funds or moneys shall be deposited by the Trustee in Bankruptcy in a separate bank account and not commingled with any other funds of the Bankrupt Estate, and shall be deemed earmarked for application on the Bank's indebtedness as provided in said agreement of January 12, 1937, and this supplement thereto, and except as in said agreement and said supplement provided, shall not, until the indebtedness due the Bank has been paid, become any part of the general assets of the Bankrupt Estate. No provision of said agreement of January 12, 1937, or this supplement thereto is made or entered into, directly or indirectly, for the purpose of fixing the amount of the fees or other compensation to be paid to any party in interest or any attorneys of any party in interest in this bankruptcy proceeding, for services rendered in connection therewith or otherwise, and the fixing and determination of any fees or compensation to be paid to anyone whomsoever from the assets of this Bankrupt Estate, is, in accordance with the law, left entirely to the determination of the court having jurisdiction of this bankruptcy proceeding, unaffected by any provision, term or condition, express or implied, of said contract of January 12, 1937, or of this supplement thereto."

Dated this day of October, 1937.

[Seal] **F. P. NEWPORT CORPORATION,
LTD.,**

By **F. P. NEWPORT**, President

By **J. B. GRIBBLE**, Secretary

Exhibit "C"—(Continued)

[Seal] SECURITY-FIRST NATIONAL
BANK OF LOS ANGELES,

By L. W. CRAIG, Vice President

By R. T. ADAMS, Asst. Secretary

H. F. METCALF,

As Trustee in Bankruptcy of F. P.

Newport Corporation, Ltd.

HUBERT F. LAUGHARN,

L. M. CAHILL,

Counsel for F. P. Newport Corporation,
Ltd.

W. C. SHELTON, GEORGE BURCH,
JR., and EARL E. MOSS,

By W. C. SHELTON,

Counsel for Security-First National

Bank of Los Angeles [73]

ROBERT B. POWELL,

Counsel for Hubert F. Laugharn

BAILIE, TURNER & LAKE,

By NORMAN A. BAILIE,

Counsel for H. F. Metcalf, Trustee
in Bankruptcy

Approved this 29th day of October, 1937.

PAUL J. McCORMICK,

United States District Judge

[Endorsed]: Filed Dec. 31, 1940, Ernest R. Uteley,
Referee. Filed Nov. 28, 1941. R. S. Zimmerman,
Clerk. [74]

[Title of District Court and Cause.]

SUPPLEMENTAL CERTIFICATE ON
REVIEW

On June 2, 1954 the undersigned Referee in Bankruptcy, on behalf of Hugh L. Dickson, a Referee in Bankruptcy of this Court, filed herein a certificate on review of Referee Dickson's order entered March 24, 1954, disallowing the claim of the United States of America for income taxes in the sum of \$11,970.13. At the request of counsel for the Federal government, this supplemental certificate is accompanied with a copy of a stipulation of facts entered into between the Trustee in Bankruptcy of the estate and the United States of America and Nat Rogan, its Collector of Internal Revenue, dated Dec. 30, 1940, and which appears on pages 50 to 60, both pages inclusive, in the transcript of record of the Supreme Court of the United States, October term 1942, No. 665 in the case of H. F. Metcalf, as Trustee in Bankruptcy of the Estate of F. P. Newport Corporation, Ltd., a corporation, Bankrupt, Petitioner, vs. United States of America, Respondent. It is stipulated by the parties to the review that [75] such printed stipulation of facts is a true copy of the original.

On March 18, 1954, during the argument of the matter before Referee Dickson, Mr. Harpole on behalf of the United States of America stated: "For the purpose of the record I wish to have the stipulation of facts filed in the original objection to

the government's claim considered as part of the evidence in connection with this objection," to which Referee Dickson replied: "That will be done."

Dated: June 24, 1954.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy [76]

[Endorsed]: Filed June 24, 1954.

[Title of District Court and Cause.]

ORDER ON PETITION TO REVIEW REFER-
EE'S ORDER DISALLOWING CLAIM FOR
INCOME TAXES DATED MARCH 24, 1954

The petition of the United States of America to review the Order of the Referee dated March 24, 1954, disallowing the claim of the United States for income taxes in the sum of \$11,970.13, heretofore argued and submitted, is hereby decided as follows:

The said Order of the Referee is hereby affirmed.
Formal Order to follow.

The only question before the Court is whether the Referee was justified in disallowing the claim for taxes on income derived after liquidation. The Court is of the view that from the moment of liquidation, the Trustee was no longer operating the business. See writer's opinion in *Re Owl Drug Company*, D.C. Cal., 1937, 21 Fed. Supp. 907; California State

Board of Equalization vs. Goggin, 1951, 9 Cir., 191 F.(2) 726, 728.

Hence the ruling above made.

Dated: July 6, 1954.

/s/ LEON R. YANKWICH,

Chief Judge

[77]

[Endorsed]: Filed July 6, 1954.

In the United States District Court, Southern District of California, Central Division

No. 25,308—Bankruptcy

In the Matter of F. P. NEWPORT CORPORATION, LTD., a corporation, Bankrupt.

**ORDER AFFIRMING REFEREE'S ORDER
DATED MARCH 24, 1954, DENYING CLAIM
OF UNITED STATES FOR 1952 INCOME
TAXES**

Petition of the United States of America to review the order of the Referee in Bankruptcy dated March 24, 1954, disallowing the claim of the United States for Income taxes for the calendar year 1952 in the sum of \$11,970.13 came on for argument before this Court on June 28, 1954, Eugene M. Harpole, Esq., appearing for the United States, and George Bouchard, Esq., appearing for the trustee, the Court having heard the arguments of counsel

and being fully advised in the premises, now makes its Order as follows:

The Order of the Referee, dated March 24, 1954, disallowing the claim of United States for income tax for the calendar year 1952 in the sum of \$11,-970.13 is hereby confirmed.

Dated: July 15, 1954.

/s/ LEON R. YANKWICH,
Chief Judge, U. S. District Court

Approved as to form: Signed Laughlin E. Waters,
U. S. Attorney; Edward R. McHale, Asst. U. S.
Attorney; Eugene Harpole, Special Attorney,
Attorneys for United States. [78]

[Endorsed]: Filed July 15, 1954.

[Endorsed]: Judgment Docketed and Entered
July 16, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, a claimant in the above entitled bankruptcy proceeding, that it hereby appeals to the Court of Appeals for the Ninth Circuit from the Orders of the United States District Court for the Southern District of California, confirming and approving the Order of Hugh L. Dickson, Referee in Bankruptcy, of March 24, 1954, disallowing in full

the claim theretofore filed in the above entitled proceeding on behalf of the United States of America for income taxes alleged to be due from the bankrupt estate for the taxable year 1952, made and entered in this action through the Honorable Leon R. Yankwich, Judge of the above entitled Court on the 6th day of July, 1954, and the 15th day of July, 1954.

Dated: This 3rd day of August, 1954.

LAUGHLIN E. WATERS,
United States Attorney

EDWARD R. McHALE,
Asst. U. S. Attorney, Chief, Tax
Division

EUGENE HARPOLE,
Special Attorney, Internal Revenue
Service

/s/ By EUGENE HARPOLE,
Attorneys for Claimant, United
States of America [79]

[Endorsed]: Filed August 3, 1954.

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS TO
BE URGED UPON APPEAL

To: Paul W. Sampsell, The Trustee in Bankruptcy herein, and Bailie, Turner, Lake & Sprague and George Bouchard, his attorneys; Bank of America, National Trust & Savings Association and Edmund Nelson its attorney; Respondent Colter and William H. Neblett his attorney, and D. Day, et al., and Lawrence M. Cahill their attorney:

You and Each of You Will Please Take Notice that under the provisions of Rule 75 of the Rules of Civil Procedure of the District Courts of the United States, the Appellant intends to rely upon the following points in the appeal of the above entitled case:

1. That the District Court and the Referee in Bankruptcy erred in disallowing the claim filed by Robert A. Riddell as Director of Internal Revenue for the Los Angeles District of California on behalf of the United States of America for Federal income taxes for the taxable year 1952 in the sum of \$11,-391.21 for the reason that said taxes were lawfully due to the United States upon the net income realized by the bankrupt estate from the operation of its property or business during said year.

2. That the District Court and the Referee in Bankruptcy erred in [80] failing and refusing to hold that the Trustee in Bankruptcy was, during the taxable year 1952, operating the property or

business of F. P. Newport Corporation, Ltd., the bankrupt herein, within the meaning of §52(a) of the Internal Revenue Code and §39.52-2 of the Federal Tax Regulations (1954 Edition Congressional Code Service).

3. That the District Court and the Referee in Bankruptcy erred in holding that the net income of \$32,483.09 determined by the Commissioner of Internal Revenue to have been received by said bankrupt estate and its Trustee in Bankruptcy during the calendar year 1952 was not subject to Federal income taxes within the meaning of §52(a) of the Internal Revenue Code.

4. That the District Court and the Referee in Bankruptcy erred in failing to allow the claim filed on behalf of the United States of America for 1952 income taxes in the sum of \$11,391.21.

Dated: This 6th day of October, 1954.

LAUGHLIN E. WATERS,

United States Attorney

EDWARD R. McHALE,

Asst. U. S. Attorney, Chief, Tax
Division

EUGENE HARPOLE,

Special Attorney, Internal Revenue
Service

/s/ By EUGENE HARPOLE,

Attorneys for United States of
America

[81]

Affidavit of Service by Mail attached.

[82]

[Endorsed]: Filed October 14, 1954.

[Title of District Court and Cause.]

CLAIMANT-APPELLANT'S DESIGNATION
OF RECORD

To: The Clerk of the District Court of the United States for the Southern District of California, Central Division:

You Are Hereby Requested to include in the record on appeal herein from the Orders of the District Court signed and filed July 6, 1954 and July 15, 1954, confirming and approving the Order of the Referee in Bankruptcy, Hugh L. Dickson, of March 24, 1954, which disallowed the claim of the United States for 1952 income taxes, the following:

1. Petition in Bankruptcy.
2. Order of Adjudication.
3. Order appointing Paul W. Sampsell trustee in bankruptcy.
4. Claim filed by Collector of Internal Revenue for deficiency in 1952 Federal income taxes on or about the 6th day of January, 1954.
5. Trustee's Objection to allowance of the claim for Federal income taxes for 1952.
6. The Referee's Order of March 24, 1954, disallowing the claim of the Collector of Internal Revenue for 1952 Federal income taxes.
7. Motion and Order Extending Time to File Petition for Review. [83]

8. Petition for Review of the Referee's Order of March 24, 1954, filed May 12, 1954.

9. Referee's Certificate on Review filed June 2, 1954.

10. Supplemental Certificate on Review dated June 24, 1954.

11. Stipulation of Facts dated March 18, 1954.

12. Stipulation of Facts between counsel H. F. Metcalf (the then Trustee in Bankruptcy) and the United States dated December 30, 1940, and its exhibits filed herein.

13. Orders of the District Court dated July 6, 1954, and July 15, 1954 (the Orders appealed from) approving and affirming the Referee's Order Disallowing the Claim filed for 1952 Federal Income Taxes.

14. Notice of Appeal.

15. All Orders Extending Time to Docket Cause on Appeal.

16. This Designation of Record on Appeal.

17. Designation of Points to be Relied Upon on Appeal.

18. Clerk's Certificate.

This transcript is to be prepared as required by law and the rules of this Court and the rules of the Court of Appeals of the United States for the Ninth Circuit at San Francisco, California.

Dated: This 6 day of October, 1954.

LAUGHLIN E. WATERS,

United States Attorney

EDWARD R. McHALE,

Asst. U. S. Attorney, Chief, Tax
Division

EUGENE HARPOLE,

Special Attorney, Internal Revenue
Service

/s/ By EUGENE HARPOLE [84]

Affidavit of Service by Mail attached. [85]

[Endorsed]: Filed October 14, 1954.

[Title of District Court and Cause.]

TRUSTEE-APPELLEE'S DESIGNATION
OF RECORD

To: The Clerk of the District Court of the United
States for the Southern District of California,
Central Division:

You Are Hereby Requested to include in the record on appeal from the Orders of the District Court signed and filed July 6, 1954, and July 15, 1954, confirming and approving the Order of the Referee in Bankruptcy dated March 24, 1954, which disallowed the claim of the United States for 1952 income taxes the following additional portion of the record, proceedings and evidence:

1. Petition for Order of Liquidation dated April 14, 1952.

2. Order of Liquidation signed by the Honorable Hugh L. Dickson, Referee in Bankruptcy, dated May 26, 1952.

3. Petition for Review filed June 5, 1952.

4. Order of the District Judge Confirming Referee's Order of Liquidation signed by the Honorable Paul J. McCormick, United States District Judge, dated November 28, 1952, and docketed and entered December 1, 1952.

Dated: 18th day of October, 1954.

NORMAN A. BAILIE,
GEORGE BOUCHARD,

/s/ By GEORGE BOUCHARD,

Attorneys for Trustee in Bankruptcy

[Endorsed]: Filed October 19, 1954. [86]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET
CAUSE ON APPEAL

Upon motion of Claimant-Appellant, United States of America, and good cause appearing therefor:

It Is Hereby Ordered that the time within which to file the record and docket the appeal in the United States Court of Appeals for the Ninth Cir-

cuit be, and the same is hereby, extended to and including the 1st day of November, 1954.

Dated: This 3rd day of September, 1954.

/s/ BEN HARRISON,
United States District Judge

Presented by:

/s/ EDWARD R. McHALE,
Assistant United States Attorney, Chief,
Tax Division. [87]

Affidavit of Service by Mail attached. [88]

[Endorsed]: Filed September 3, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 88, inclusive, contain the original Claim of United States for Taxes; Objections to Claim of United States Government for Taxes alleged to be due; Stipulation of Facts filed March 24, 1954; Order Disallowing Claim of Director of Internal Revenue for 1952 Income Taxes; Two Motions and Orders Extending Time to File Petition for Review; Petition for Review; Certificate of Referee on Review; Copy of Stipulation of Facts filed December 31, 1940; Supplemental Certificate on Review; Order on Petition to Review Re-

feree's Order Disallowing Claim for Income Taxes dated March 24, 1954; Order Affirming Referee's Order dated March 24, 1954, denying Claim of United States for 1952 Income Taxes; Notice of Appeal; Statement of Points to be Urged Upon Appeal; Two Designations of Record on Appeal and Order Extending Time to Docket Appeal which, together with Petition in Bankruptcy (pp. 2-5); Order of Adjudication (p. 6); Order Approving Appointment of Paul W. Sampsell as Trustee in Bankruptcy (p. 7); Petition for Order of Liquidation dated April 14, 1952 (pp. 86-101); Order of Liquidation signed by Referee in Bankruptcy, dated May 26, 1952 (pp. 104-105); Petition for Review filed June 5, 1952 (pp. 106-115) and Order of District Judge Confirming Referee's Order of Liquidation (p. 116), certified as part of the record on the appeal of F. P. Newport Corporation, Ltd., shortly to be certified to the United States Court of Appeals for the Ninth Circuit, in this same cause, constitute the transcript of record on this appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 28 day of October, A. D. 1954.

[Seal]

EDMUND L. SMITH,

Clerk

/s/ By THEODORE HOCKE,

Chief Deputy

[Endorsed]: No. 14569. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Paul W. Sampsell, Trustee in Bankruptcy for the Estate of F. P. Newport Corporation, Ltd., bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: October 29, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14569

UNITED STATES OF AMERICA,
Appellant,
vs.

PAUL W. SAMPSELL, as Trustee in Bankruptcy
of the Estate of F. P. Newport Corporation,
Ltd., a Corporation, Bankrupt, Appellee.

APPELLANT'S STATEMENT OF POINTS

To: Paul W. Sampsell, The Trustee in Bankruptcy
herein, and Bailie, Turner, Lake & Sprague
and George Bouchard, his attorneys; Bank of
America, National Trust & Savings Association
and Edmund Nelson its attorney; Respondent
Colter and William H. Neblett his attorney,
and D. Day, et al., and Lawrence M. Cahill
their attorney:

You, and Each of You Will Please Take Notice
That: Under the provisions of subsection (6) of
Rule 19, the Rules of Practice of the United States
Court of Appeals for the Ninth Circuit, that the
Appellant, United States of America, intends to
rely upon the following points in its appeal from
the orders of the District Court of July 6 and 15,
1954, which confirmed and approved the Order of
the Referee in Bankruptcy of March 24, 1954, dis-
allowing the claim of the United States for 1952
income taxes:

1. That the District Court and the Referee in Bankruptcy erred in disallowing the claim filed by Robert A. Riddell as Director of Internal Revenue for the Los Angeles District of California on behalf of the United States of America for Federal income taxes for the taxable year 1952 in the sum of \$11,391.21 for the reason that said taxes were lawfully due to the United States upon the net income realized by the bankrupt estate from the operation of its property or business during said year.

2. That the District Court and the Referee in Bankruptcy erred in failing and refusing to hold that the Trustee in Bankruptcy was, during the taxable year 1952, operating the property or business of F. P. Newport Corporation, Ltd., the bankrupt herein, within the meaning of §52(a) of the Internal Revenue Code and §39.52-2 of the Federal Tax Regulations (1954 Edition Congressional Code Service).

3. That the District Court and the Referee in Bankruptcy erred in holding that the net income of \$32,483.09 determined by the Commissioner of Internal Revenue to have been received by said bankrupt estate and its Trustee in Bankruptcy during the calendar year 1952 was not subject to Federal income taxes within the meaning of §52(a) of the Internal Revenue Code.

4. That the District Court and the Referee in Bankruptcy erred in failing to allow the claim filed

on behalf of the United States of America for 1952
income taxes in the sum of \$11,391.21.

Dated: This 26th day of October, 1954.

LAUGHLIN E. WATERS,

United States Attorney

EDWARD R. McHALE,

Asst. U. S. Attorney, Chief, Tax

Division

EUGENE HARPOLE,

Special Attorney, Internal Revenue

Service

/s/ By EUGENE HARPOLE,

Attorneys for Appellant-Claimant, United States of
America.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 29, 1954. Paul P. O'Brien,
Clerk.

